

IN THE SUPREME COURT OF THE UNITED STATES

Term, 19 _____

NO. _____

79-459

LOCAL 736, WILLIAMSPORT FIREFIGHTERS,
SMITH, JONATHAN; SAMPSON, DENNIS;
EMERICK, RICHARD; CHILSON, DENNIS;
HILL, DANIEL; DOCHTER, WILLIAM;
ANTHONY, HAROLD; STONE, JEFREY;
& BIICHLE, LAWRENCE, Individually and on behalf
of all other Williamsport City Residents, Taxpayers
and those protected by Williamsport Firefighters

vs.

CITY OF WILLIAMSPORT, KIRBY, DANIEL,
MAYOR; and PAGANA, CHARLES; LUCASI,
STEVEN; HIPPLE, RANDALL; STAIMAN, MARVIN;
BAILEY, THOMAS; CURCHOE, CARL; and
HUNTER, CARL, as the CHIEF ELECTED
OFFICIALS and members of the Williamsport City
Council

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

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**IN THE
SUPREME COURT OF THE UNITED STATES**

LOCAL 736, WILLIAMS- : No. 79-1190 Appeal
PORT FIREFIGHTERS, : Number from the United
et al., : States Court of Appeals
for the Third Circuit

Appellants :

vs. :

CITY OF WILLIAMS- :
PORT, DANIEL KIRBY, :
MAYOR, et al., :

Appellees :

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

The Petitioner, Local 736, Williamsport Firefighters, et al., respectfully prays that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on June 5, 1979.

OPINIONS BELOW

The original judgment of the Court of Appeals, not yet reported, appears in the Appendix hereto. An opinion was rendered by the District Court for the Middle District of Pennsylvania and is attached to the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on June 5, 1979. A Petition for Certiorari was filed within 90 days of the date indicated and this Court's jurisdiction is invoked under 28 U.S.C., section 1254 [1].

QUESTION PRESENTED

Whether firemen as class representatives of the citizens of a city are entitled to due process protection when a reduction in the city firefighting force takes place which may endanger the lives and property of the city populus and where state law sets forth criteria before there can be a lay-off and grants a tort remedy for inadequate fire protection.

STATEMENT OF THE CASE

The following chronology is relevant:

1. On December 20, 1978, Petitioners filed a complaint in Federal Court as a class action on behalf of themselves and all those who are residents, taxpayers and individuals protected by the Williamsport Firefighters. The basis of Petitioners' claim is that they were denied due process because said class has a life, liberty and property interest in fire protection under Pennsylvania law, the removal of which implicates the Fourteenth Amendment. Petitioners maintain that they were not heard or given an opportunity to be heard with respect to why the firemen to be laid off were unneeded or that the removal of said employees would improve efficiency.

2. On December 29, 1978, the District Court granted a temporary restraining order preventing the lay-off until January 8, 1979. Another order was issued January 5, 1979, extending the temporary restraining order up to and including January 18, 1979. On January 18, 1979, a further extension for the temporary restraining order was denied.

3. The parties entered into a Stipulation and Agreed Statement of Facts which is attached hereto. The Agreed Statement of Facts set forth, *inter alia*, the following:

3.1 Defendants have not attempted to show in any forum that Petitioners are unneeded employees, that the removal of said employees would improve efficiency or that the suspension of the firemen would not jeopardize the public welfare.

3.2 It is the position of Respondents that since the lay-offs are purely for economic reasons, the City need not show that the individuals laid off are unneeded employees, the City need not show that the removal of said employees would improve the efficiency of the Department and the City need not show that the Lay-offs of the employees would not jeopardize the public welfare.

3.3 It was agreed that there was no hearing specifically for the purpose of the City presenting information or evidence to a fact finder with respect to whether the firemen were unneeded, would increase efficiency to lay off said firemen or would jeopardize the public welfare if the men were laid off, with the opportunity for cross examination and presentation of evidence by the firefighters followed by findings of fact and conclusions of law by an impartial body.

3.4 There was no notice to the firemen, the union, the taxpayers, the residents or those protected by the firemen orally, via media or otherwise that an

opportunity existed for a hearing at which the City and said individuals could present evidence on the three criteria listed, subject to cross examination and with representation by counsel.

3.5 At City Council meetings, "courtesy of the floor" was extended for a short period of time in which many questions, including the lay-offs, were spoken about by city residents.

3.6 The District Court recognized that in order to activate the Fourteenth Amendment procedural due process clause, Petitioners must first possess a property interest but said District Court did not find the existence of such an interest. The Court did not discuss whether Petitioners would have an objective expectancy of continued employment, which test has been derived from Supreme Court doctrine.

3.7 The Court found that the jobs of the firemen are terminable "at will" for reasons of economy. The Court never discussed the existence of a "life" interest insofar as the reduction in the number of firemen could cause loss of life and property damage within the City of Williamsport.

4. The District Court attempted to distinguish **Memphis Light, Gas and Water Division vs. Kraft**, 436 U.S. 1, [1978] where a "property" interest in utility services was founded upon Tennessee decisional law. The Tennessee state courts held that where there was a dispute as to a water bill and the company cut off service, there would be liability for damages. The Supreme Court stated that the availability of such local tort remedies was "evidence" of the state's recognition of a protected interest. The Supreme Court extrapolated from the tort concept that the utility service was therefore not terminable "at will" and the service could not be cut off except for good and sufficient cause. The District Judge refused to

apply **Memphis Light, Gas & Water Division** reasoning to the case at bar and rejected the notion that Pennsylvania tort law could give rise to a protected interest.

5. It is respectfully submitted that the rejection of Pennsylvania case law permitting lay-offs of firemen only when it is shown that they are unneeded and that there has been some advance study or that the efficiency of the fire department would not be lowered amounts to an obvious due process violation under federal case law and, second, the rejection of Pennsylvania tort law as setting forth a duty owed which could give rise to due process guarantees represents a departure from unimpeached Supreme Court authority.

6. On June 5, 1979, the Third Circuit affirmed the District Court opinion.

REASONS FOR GRANTING THE PETITION

The decision in the District Court, affirmed without opinion in the Court of Appeals, that there is no due process necessary when firemen are laid off for economic reasons in spite of state law setting forth certain criteria before the firemen could be laid off for economic reasons and erecting a tort remedy for improper fire protection, is a direct departure from **Bishop vs. Woods**, 426 U.S. 341 [1976]; **Memphis Light, Gas & Water Division vs. Craft**, *supra*; **Perry vs. Sinderman**, 408 U.S. 593 [1972]; **Board of Regents vs. Roth**, 408 U.S. 564 [1972]; **Mathews vs. Eldridge**, 424 U.S. 319 [1976]; **Goss vs. Lopez**, 419 U.S. 565 [1975] and **Goldberg vs. Kelley**, 397 U.S. 254 [1970]. Since there are hundreds and perhaps thousands of cases around the country based upon the principles announced in the Supreme Court cases listed, it is important for municipalities to know whether they will be obligated to respect the tort and decisional precepts which give rise to due process guarantees.

Rule 19 sets forth the criteria as to when a Petition for Certiorari may be granted and the following apply:

1. The Court of Appeals affirmance has the effect of deciding an important question of federal law which is either a departure from Supreme Court authority or has not been, but should be, settled by this court.

2. The District Court and the Circuit Court has, in effect, decided a federal question in a way which is directly in conflict with applicable decisions of this court.

3. Both courts below has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

The District Court admitted that in **Genes vs. City of Duquesne**, 27 Pa. Cmwlth. 620, 367 A.2d 327 [1976], the case relied upon by Petitioners as holding that due process attached, "reasons of economy" were said to include a saving of money by the removal of unneeded employees or removal of firemen in order to improve efficiency. The court also admitted that the city of Duquesne had fulfilled the criteria in that case by obtaining the opinion of experts in the field of firefighting and that the reduction in the firefighting force resulting from the removal of the firemen would not adversely affect fire protection. Criteria governing the removal of a property or life interest and setting forth standards in such situations commonly gives rise to an objective expectancy of continued employment. The teachings of **Bishop vs. Wood** and enumerable cases following are that once a duty must be exercised or discretion utilized for a specific standard, a failure to follow those standards will result in a violation of due process. Here it has been admitted that the criteria were not followed and that the only reason given for the laying off of the firemen was "economy" yet the District Court did not find a due process violation.

Perhaps even more serious, the Supreme Court in **Memphis Light, Gas & Water Division** held that although underlying substantive interests are created by "an independent source such as state law," federal constitutional law determines whether that interest rises to the level of a "legitimate claim of entitlement" protected by the due process clause. **Id.** 98S. Ct. 1560. **Craft** held that the availability of local-law remedies (such as tort remedies) "is evidence of the state's recognition of a protected interest." **Id.** at 98 S. Ct. 1561. As was made clear in **Perry vs. Sinderman** property interests "are not limited by a few rigid, technical forms." **Id.** at 92 S. Ct. 2699. Rules or "mutually explicit understandings" that support a claim of entitlement to benefits give rise to due process. **Ibid.**

The local-law giving rise to the "protected interest" in the case at bar is set forth in the **Genes** case cited and the tort remedies can be found at **Doyle vs. South Pittsburgh Water Company**, 414 Pa. 199, 199A.2d 875 [1964]; **Malter vs. South Pittsburgh Water Company**, 414 Pa. 231, 198 A.2d 850 [1964]; **Printed Terry Finishing vs. City of Lebanon**, 247 Pa. Super. 277, 372 A.2d 460 [1977] and **Renrag vs. Dauphin Consolidated Water Supply Company**, 46 D.&C. 2d. 664 [1969].

The spector of due process hearings for all kinds of municipal actions was raised by the court and Respondents but it is respectfully submitted that the number of decisions subject to due process do not govern whether the constitutional right attaches. The extent and nature of the hearing which must be afforded is a separate and distinct question which was not reached by the courts below. The same argument was made in **Goldberg vs. Kelley** and was rejected by this court.

There appears little reason to sanction a radical departure from prior "due process" case law in this

court because a municipal fire department is involved especially considering the interests; loss of jobs, loss of fire protection, loss of lives and the like.

CONCLUSION

The Petition for a Writ of Certiorari should be granted less an unprecedented departure from Supreme Court authority be permitted.

Respectfully Submitted,

STUART, MURPHY, SMITH, MUSSINA,
HARRIS & RIEDERS

Clifford A. Rieders

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Attorneys for Appellants

IN THE SUPREME COURT OF THE UNITED STATES

LOCAL 736, WILLIAMS- : No. 79-1190 (Appeal
PORT FIREFIGHTERS, : Number from the United
et al., : States Court of Appeals
for the Third Circuit)

Appellants

vs.

CITY OF WILLIAMS- :
PORT, DANIEL KIRBY, :
MAYOR, et al., :

Appellees

CERTIFICATE OF SERVICE

AND NOW comes Clifford A. Rieders, Attorneys for Appellants, and certifies that the required number of copies of the within Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit has been served upon Michael Rodak, Jr., Clerk, United States Supreme Court, One First Street, N.W., Washington, D.C. 20543, this 4th day of September, 1979, by personal delivery.

He further certifies that copies have been served upon Thomas Quinn, Clerk, U.S. Court of Appeals, 21400 U.S. Courthouse, Independence Mall, 601 Market Street, Philadelphia, PA 19106, The Honorable William J. Nealon, U.S. District Court, Post Office Building, Box 1146, Scranton, PA 18501 and Ronald

C. Travis, Esquire, 23 West Third Street, Williamsport, PA 17701, this 4th day of September, 1979, by first class mail, postage prepaid.

STUART, MURPHY, SMITH, MUSSINA,
HARRIS & RIEDERS

s/Clifford A. Rieders

Clifford A. Rieders, Esquire
Attorneys for Appellants

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LOCAL 736, THE WILLIAMSPORT
FIREFIGHTERS, et al.

v.

CITY OF WILLIAMSPORT
DANIEL KIRBY, MAYOR, et al.

NO. 78-1254 CIVIL

FILED

SCRANTON, PA

JAN 31 1979

DONALD R. BERRY, Clerk

MEMORANDUM AND ORDER

PER

DEPUTY CLERK

In this action brought pursuant to 42 U.S.C. § 1983, nine plaintiffs, firemen and citizens of Williamsport, Pa., seek to represent all the citizens of Williamsport as a class and to challenge their (plaintiffs') layoff as fireman in that city.^{1,2} Defendants are the city of Williamsport, its Mayor and the City Council. Plaintiffs claim that as citizens and taxpayers of Williamsport, they have a "property" interest in the adequacy of their fire protection and that the layoff has deprived them of this interest without due process of law. In their complaint plaintiffs also contend that the layoff violated various rights they had as fireman and municipal employees.³ The parties have now submitted an agreed

1. Plaintiffs originally sought to enjoin defendants from terminating their employment. On December 28, 1978, one day before the proposed layoff, this court temporarily restrained defendants from discharging plaintiffs until January 8, 1979. This TRO was conditioned on plaintiffs' posting a bond of \$10,000. The TRO was extended until January 18th, conditioned on the posting of an additional \$1,100. Thereafter, the court was informed that plaintiffs could not post any additional bond and a request for a further extension was denied.

2. The court was informed by counsel that prior to the layoff there were approximately fifty-five firemen employed by the City of Williamsport.

3. The City of Williamsport has asserted that the firemen were discharged solely for reasons of economy. See doc. No. 18, agreed statement of facts, ¶ 9.1. This is a legitimate reason to reduce the number of firemen under Pennsylvania law. See Pa. Stat. Ann. tit. 53, § 39871 (Purdon). There are no allegations here that defendants have not acted in good faith or that the layoffs were for other than economic reasons. See *infra*

statement of facts and a stipulation. See documents Nos. 17, 18, & 20. Briefs were filed by the parties on January 29, 1979, and the matter is ripe for disposition.

The claims that plaintiffs raised regarding their rights as municipal employees have all, except one, see infra, been settled. The issues now before the court are: (1) whether to abstain; (2) whether plaintiffs as citizens and taxpayers of Williamsport, in fact, have a "property" interest in adequate fire protection such that the defendants may not reduce the number of firemen (assuming the reduction results in inadequate fire protection) without providing some sort of public hearing in order to satisfy procedural due process; (3) whether, if plaintiffs as citizens do have such a "property" interest, the budget hearings held by defendants in the latter part of 1978 satisfy the requirements of procedural due process; (4) if a public hearing must now be held, what type of appeal rights are available to contest the outcome of that hearing; (5) whether plaintiffs may maintain a class action on behalf of all the citizens and taxpayers of Williamsport; and (6) whether the scope of the Civil Service hearing, which plaintiffs as firemen will now presumably request and receive, should be determined initially by the court.

I conclude that this case is not a proper case for invoking the abstention doctrine and, hence, I will reach the merits. I have decided that plaintiffs⁴ do not have a "property" interest here requiring defendants to hold public hearings or the like before they may reduce the number of

4. Unless stated otherwise, hereafter the term plaintiffs refers to plaintiffs as citizens and taxpayers, not as municipal employees.

fireman in Williamsport. Given that determination, I will not reach issues numbers three (3) sufficiency of budget hearings, four (4) appellate rights, and five (5) maintenance of class action. As to number six (6), I do not believe it appropriate for this court to decide in the first instance what should be the scope of the Civil Service hearings to be given the plaintiffs as firemen. Accordingly, the action will be dismissed.

ABSTENTION

Defendants claim that this court should abstain here based on that prong of the abstention doctrine as originally set out in *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 497 (1941). In *D'Iorio v. County of Delaware*, Slip Op. Nos. 78-1516 & 78-1517 (3d Cir., Dec. 20, 1978), the United States Court of Appeals for the Third Circuit listed the three prerequisites that must be met for the application of this doctrine. First, there must be uncertain issues of state law underlying the federal constitutional claims. Secondly, the state law issues must be amenable to an interpretation by the state courts that would eliminate or narrow the constitutional question. Thirdly, it must appear that an erroneous decision of state law by the federal court would be disruptive of important state policies. *Id.*, p. 7. Defendant claims that state law is uncertain or unresolved here in regard to, *inter alia*, whether a municipality must hold a public hearing before reducing the number of firemen. But this court looks to state law, not to determine whether that law requires a hearing, but rather to determine whether there has been created a "property" interest. State law may create the underlying substantive interest, but federal constitutional law determines whether the interest rises to a legitimate claim of entitlement.

it does, federal constitutional law also determines the type of procedural due process that is required. See *Memphis Light Gas & Water Div. v. Craft*, 436 U.S. 1 (1978). I do not believe that state law is unclear here. Rather I believe that state law has not created a "property" interest which would require elected members of a city council to hold a special public type hearing before they could decide to reduce the number of firemen. Therefore, abstention is not appropriate.

THE "PROPERTY" INTEREST

Ordinarily, absent such things as claims of unconstitutional discrimination, or an infringement of a constitutionally protected right, or reprisal for the exercise of a constitutional right, it is not within the province of the federal judiciary to review decisions by a municipality allocating its resources. It is a decision within the scope of authority possessed by municipal executives, and not this court, to determine how many fireman a municipality should employ. See *Towns v. Beame*, 386 F. Supp. 470 (S.D.N.Y. 1976); Cf. *Jackson v. New York City Health and Hospital Corp.*, 419 F. Supp. (S.D.N.Y. 1976). However, plaintiffs here are not making any substantive due process claim, i.e., they are not directly challenging the actual decision, but rather are asserting that the decision was not accomplished in accordance with procedural due process rights guaranteed by the Fourteenth Amendment of the United States Constitution.

In order to activate the Fourteenth Amendment procedural due process clause, plaintiffs must first possess a "property" interest. The term "property," for due process purposes, is not susceptible of an exact definition. It has been generally stated that "'property' denotes a broad range

of interests that are secured by 'existing rules or understandings'. ... A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing." *Perry v. Sinderman*, 408 U.S. 593, 601 (1972). "To have a property interest in a benefit, a person must clearly have more than an abstract need or desire for it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). The federal courts have held many interests to be "property" interests. For instance, see *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1 (1978) (utility services); *Mathews v. Eldridge*, 424 U.S. 319 (1976) (Social Security disability benefits); *Goss v. Lopez*, 419 U.S. 565 (1975) (suspension of student from public school for disciplinary reasons); *Goldberg v. Kelley*, 397 U.S. 254 (1970) (welfare benefits). However, the recognizable "property" interests are not infinite. *Board of Regents v. Roth*, supra. Furthermore, no matter what a particular person's subjective expectation may be, if the interest he seeks to have protected by the Fourteenth Amendment is terminable "at will" by governmental authorities, there is no procedural due process protection. See *Bishop v. Wood*, 426 U.S. 341 (1976). In essence, if the interest one seeks to protect cannot be terminated except based on certain criteria, then that interest may be encompassed by the Fourteenth Amendment. One has a right to present his side to those who are depriving him of the interest, a right to show that the acceptable criteria for deprivation have not been met. If there are no factual issues to be resolved, i.e., if one does not, or cannot, dispute the grounds

upon which the decision was made, there is no right to a hearing. See Codd v. Velger, 429 U.S. 624 (1976).

This underlying "property" interest, upon which the invocation of the Fourteenth Amendment depends, is not created by the Constitution, but rather by an independent source. This independent source may be a particular state's statutory or decisional law. See Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1 (1978). Plaintiffs contend that Pennsylvania decisional law has created a "property" interest here.

Plaintiffs' state law argument is based on a line of Pennsylvania cases holding that a city may be liable for negligently failing to supply adequate water to fight fires and, additionally, on one case, Genes v. City of Duquesne, 367 A.2d 372 (Pa. Commonwealth Ct. 1976). In Genes, firemen challenged their discharge for economy reasons pursuant to Pa. Stat. Ann. tit. 53, § 39871 (Purdon), the same statute under which plaintiffs here were discharged, see n. 3 supra. In upholding the discharge, the court stated that "reasons of economy" (referring to the first sentence of § 39871) "would include, in our judgment, a saving of money by the removal of unneeded employees" (emphasis added) The court went on to state "It is significant that before removing the appellants the City obtained the opinion of experts in the field of firefighting that the reduction in the firefighting force resulting from the appellants' removal would not adversely affect fire protection." It is stipulated here that defendants have not attempted to demonstrate in any forum that plaintiffs were unneeded employees, that their removal would improve efficiency or that their suspension would not jeopardize the public welfare.

See Doc. No. 18, agreed Statement of Facts, ¶. 9. Plaintiffs have seized upon the language in Genes regarding "unneeded" firemen and upon that court's approval of defendants' having satisfied themselves that the post-layoff fire protection was adequate as establishing that state law has recognized or created a "property" interest. As to the line of cases upon which plaintiffs also rely, they are typified by Printed Terry Finishing Co., Inc. v. City of Lebanon, 247 Pa. Super. Ct. 277 (1977), allocatur refused. There the Pennsylvania Superior Court held that where a municipality has decided to supply water to its residents for fire fighting purposes, it owes a duty to provide sufficient water for that purpose and where it negligently breaches that duty, it may be liable in damages.

Plaintiffs also assert that Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1 (1978) supports their position. There the United States Supreme Court found a "property" interest in utility services based on Tennessee decisional law. The Tennessee State Courts had held that, although a company supplying utility service to the public had a right to shutoff service for nonpayment, where there was a dispute as to the bill and the company simply cut off the service, the company could be liable for damages if in fact it was wrong. State law also provided that an aggrieved customer might be able to enjoin a wrongful threat to terminate. The Supreme Court stated that the availability of such local law remedies was evidence of the state's recognition of a protected interest. However, the court also found that the utility service was not terminable "at will" because it could not be cut off except for good and sufficient cause.

Based on the above cases, plaintiffs contend that, since the City of Williamsport has undertaken to have a paid fire department, adequate fire protection must be maintained and the City cannot reduce the number of fireman without a showing that the discharged firefighters are unneeded. Therefore, argue plaintiffs, a "property" interest has been created in the citizenry at large which rises to a legitimate claim of entitlement and, hence, requires the protection of the Fourteenth Amendment. I cannot agree.

First, I believe that under Pennsylvania state law, firemen are terminable "at will" for reasons of economy. In *Kraftican v. Borough of Carnegie*, 386 A.2d 1064 (Pa. Cmwlth Ct. 1978) a policeman challenged his discharge pursuant to 53 Pa. Stat. Ann. tit. § 46190 (Purdon) for economic reasons. The pertinent language of that statute is almost identical to the one under which plaintiffs were discharged, see n. 3 *supra*, (and applies to firemen of boroughs as well as policemen). The Commonwealth Court held that the only limitations on the power of a municipality to discharge for reasons of economy was that it must act in good faith. The point of that requirement is that a municipality may not use "reasons of economy" as a ruse in order to lay off a municipal employee who the authorities wish to discharge for other reasons. See *Borough of Cannonsburg v. Flood*, 387 A.2d 951 (Pa. Cmwlth. Ct. 1978). The good faith requirement would not be for the benefit of the general citizenry because the general citizenry should have no concern with which particular fireman are discharged. It has also been held that, absent a statute or something such as an arbitration award to the contrary, it is up to the city council to determine the number of police to employ. See Pennsylvania State

Lodge Fraternal Order of Police v. City of Wilkes-Barre, 388 A.2d 1466 (Pa. Cmwlth Ct. 1978). I see no reason why the law would be any different with firemen. Hence, as stated, for reasons of economy (which are reasons unrelated to the behavior of the particular employees) firemen are dischargeable "at will" under Pennsylvania law. Genes, *supra*, does not alter that conclusion. It predated the two cases cited immediately above and at most it may have somewhat limited a municipalities' discretion or created a duty owed by the municipality, see infra. Moreover, the assertion there was that plaintiffs had not been removed for economic reasons. The fact that defendants had consulted firefighting experts supported the claim that the firemen had actually been removed for reasons authorized by the statute.

Secondly, assuming that Genes and the other cases relied on by plaintiffs do create duties owed by local governmental units; that these units may be liable for the breach of those duties; and that plaintiffs have a type of "right" to adequate fire protection, it does not follow that they have a "property" interest. Plaintiffs have cited no authority, and the court has found none, for the proposition that a duty owed by a government unit to a citizen automatically creates a "property" interest in the citizen. And, although this argument has surface appeal, I believe that it must fail as a matter of logic. When one has a duty to perform as a reasonable man (or under any standard of conduct), it simply means that, if one fails to so act, he may be liable for any damages his breach legally causes. It does not imply that the person to whom the duty is owed must be consulted before or after the actor acts. There are many situations which do not implicate

procedural due process where the government may be liable if it acts negligently. For instance, under the Federal Tort Claims Act a person may proceed against the federal government for damage sustained as a result of negligence. That does not mean that a federal government employee, before or after he decides to act, must grant procedural due process rights to the citizenry at large. Or, more to the point here, could the holding in *Printed Terry Finishing Co., Inc.*, supra, possibly mean that before a municipality can decide to change the water pressure in the hydrants it must first have public hearings? I think, and hope, not.

Thirdly, the court is not presented with the type of situation normally encompassed by procedural due process.⁵ Ordinarily, a particular individual is being deprived of an interest. The deprivation is clear. Here, although I am assuming that the fire protection in Williamsport is inadequate as a result of the layoffs, this inadequacy is something that generally would have to be proved before plaintiffs could prevail on their claim that defendants have violated the Fourteenth Amendment. A deprivation need not be shown in order to have a "property" interest, but it must be shown in order to prevail in an action which alleges a violation of the Fourteenth Amendment. There is no violation without the deprivation. See U.S. Const. Amend. XIV, § 1.⁶ To rule that plaintiffs have a "property" interest here would mean that every time a municipality did something, such as changing the type or

5. That, of course, would not be a reason, in and of itself, to hold that an interest was not a "property" interest encompassed by the Fourteenth Amendment.

6. Apparently defendants here have agreed to provide whatever procedures would be due before deprivation if the court determines that plaintiffs have a "property" interest. Therefore, in this particular case, the court would not have to decide if the fire protection in Williamsport is now adequate.

number of firetrucks, or the system they employ, or any of a myriad of things, they would either first have to grant procedural due process rights to the citizenry or else a citizen could come into federal court and litigate the adequacy of the fire protection. (This would be litigated as a prerequisite to showing a violation of the Fourteenth Amendment.) That situation would be intolerable. This court is not the appropriate forum to review such decisions. Cf. *Bishop v. Wood*, 426 U.S. 341 (1976). Furthermore, to rule as plaintiffs request would result in an unjustifiable intrusion by the federal courts into the internal workings of a local governmental unit. A municipal government has vast leeway in the management of its internal affairs. See *Sailors v. Board of Education*, 387 U.S. 105, 109 (1967). As stated, how many firemen to employ is normally a decision within the scope of authority granted to the governmental unit. I do not believe that any Pennsylvania decisions have changed that.⁷

Lastly, *Memphis Light, Gas, and Water Division*, supra, is distinguishable. There the deprivation was obvious and absolute, the utility services could only be terminated for cause and the customer had a specific dispute with the company regarding her particular bill. Hence, she had to be given a change to present her side of the dispute before termination. Also, here those effecting the alleged deprivation are acting as duly elected representatives for plaintiffs themselves. Furthermore, in our situation there are the important considerations of comity referred to above.

In sum, the firemen/plaintiffs are terminable "at will" for reasons of economy and even if we assume that Pennsylvania law has established duties in municipalities regarding


7. Also, a wrong decision does not implicate the United States Constitution. See *Bishop v. Wood*, supra.

the maintenance of adequate fire protection, no "property" interest in the general citizenry has been created.

SCOPE OF THE CIVIL SERVICE HEARING

Plaintiffs as firemen have agreed to seek a Civil Service hearing and defendants have agreed not to oppose the hearing. Hence, plaintiffs no longer assert here that their rights as firemen to procedural due process have been violated. However, they do claim that this court should decide the scope of the Civil Service hearing. In other words they want the court to determine what criteria the Civil Service Commission should use in determining whether the discharges should be sustained, who should have the burden of proof and what the party with this burden should have to establish. I do not believe it is appropriate for this court to rule on those issues. It is true that after a federal court has determined that a party possesses an interest protected by the Fourteenth Amendment, it may then proceed and decide what procedures are due. See Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1 (1978). However, here the court is no longer presented with any controversy regarding whether plaintiffs as firemen are entitled to Fourteenth Amendment due process protection in regard to their termination. If that issue were present and the court determined that they were not entitled to hearings there would be no need to determine the scope of a hearing, even if the defendants agreed to conduct one. Furthermore, I am satisfied that it is up to the Civil Service Commission, at least in the first instance, to determine the scope of its

hearing.⁸ The issue is not ripe inasmuch as the procedures employed by the Commission may turn out to be acceptable to plaintiffs.


Chief Judge, Middle District
of Pennsylvania

Dated: January 31, 1979

8. Civil Service Commissions have in the past held hearings when firemen challenged their removal for reasons of economy. See Genes v. City of Duquesne, 367 A.2d 327 (Pa. Cmwlth. Ct. 1976).

14a

ORDER

Now, this 31st day of January 1979, in accordance with the accompanying memorandum this day filed, it is hereby ordered that this action is dismissed. It is further ordered that the Clerk of Court shall hold the bonds posted by plaintiffs until directed otherwise by the court.

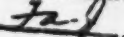

Chief Judge, Middle District
of Pennsylvania

FILED

SCRANTON, PA.

JAN 31 1979

DONALD R. BERRY, Clerk

PER 
DEPUTY CLERK

15a

THOMAS F. QUINN
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106

JAN 7 1979

TELEPHONE
215-597-2995

June 5, 1979

Clifford A. Rieders, Esquire
Stuart, Murphy, Smith, Mussina, Harris & Rieders
161 West Third Street
Williamsport, PA 17701

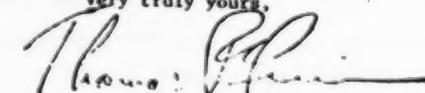
Re: Local 736, et al., Appellants vs. City of Williamsport, et al.
No. 79-1190

Dear Mr. Rieders:

Enclosed herewith is copy of Opinion filed today in the above-entitled case.

Also enclosed is copy of Judgment entered today.

Very truly yours,


Clerk

bjr

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1190

LOCAL 736, WILLIAMSPORT FIREFIGHTERS, SMITH,
JONATHAN; SAMPSON, DENNIS; EMERICK, RICHARD;
CHILSON, DENNIS; HILL, DANIEL; DOCHTER,
WILLIAM; ANTHONY, HAROLD; STONE, JEFREY; &
BIICHLE, LAWRENCE, Individually and on behalf
of all other Williamsport City Residents,
Taxpayers and those Protected by Williamsport
Firefighters,

Appellants,

vs.

CITY OF WILLIAMSPORT: KIRBY, DANIEL, MAYOR;
AND PAGANA, CHARLES; LUCASI, STEVEN; HIPPLE,
RANDALL; STAIMAN, MARVIN; BAILEY, THOMAS;
CURCHOE, CARL; and HUNTER, CARL, as the CHIEF
ELECTED OFFICIALS and members of the
Williamsport City Council

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 78-1254)

Submitted Under Third Circuit Rule 12(6)
June 4, 1979

Before: ALDISERT, VAN DUSEN and GIBBONS, Circuit Judges.

(Filed JUN 5, 1979)

Clifford A. Rieders, Esq.
Stuart, Murphy, Smith, Mussina,
Harris & Rieders
P.O. Box 215
161 West Third Street
Williamsport, Pennsylvania 17701

COUNSEL FOR APPELLANTS

Michael J. Casale, Esq.
329 Market Street
Williamsport, Pennsylvania 17701

Ronald C. Travis, Esq.
P.O. Box 1507
Williamsport, Pennsylvania 17701

COUNSEL FOR APPELLEES

OPINION OF THE COURT

PER CURIAM.

Appellants, nine former firemen of Williamsport, Pennsylvania, instituted this action against the city to challenge their layoff from employment. Their claim, brought under 42 U.S.C. § 1983, alleged that as citizens and taxpayers of Williamsport they have a property interest in adequate fire protection and that the layoff has deprived them of that interest without due process of law. Appellants sought to represent the class of all citizens of Williamsport; the parties stipulated an agreed statement of facts. The district court dismissed the action, finding that no property interest existed sufficient to sustain the § 1983 claim.

After consideration of all contentions raised by appellants, we will affirm the judgment of the district court essentially for the reasons set forth in the opinion by Chief Judge William J. Nealon, Local 736, Williamsport Firefighters v. Williamsport, ___ P.Supp. ___, No. 78-1254 (M.D. Pa. Jan. 31, 1979).

TO THE CLERK:

Please file the foregoing opinion.

Circuit Judge

United States Court of Appeals

for the Third Circuit

No. 79-1190

LOCAL 736 WILLIAMSPORT FIREFIGHTERS,
SMITH, JONATHAN; SAMPSON, DENNIS;
EMERICK, RICHARD; CHILSON, DENNIS;
HILL, DANIEL; DOCHTER, WILLIAM;
ANTHONY, HAROLD; STONE, JEFFREY;
& BUCHLE, LAWRENCE, Individually
and on behalf of all other Williamsport
City Residents, Taxpayers and those
Protected by Williamsport Firefighters,
Appellants

vs.

CITY OF WILLIAMSPORT: KIRBY, DANIEL MAYOR; AND
PAGANA, CHARLES; LUCASI, STEVEN; HIPPLE, RANDALL; STAIMAN,
MARVIN; BAILEY, THOMAS; CURCHOE, CARL; and HUNTER, CARL,
as the CHIEF ELECTED OFFICIALS and members of the Williamsport
City Council

(D. C. Civil No. 78-1254)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Present: ALDISERT, VAN DUSEN and GIBBONS, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District
Court for the Middle District of Pennsylvania
and was argued by ~~counsel~~ submitted under Third Circuit Rule 12(6) on June 4,
1979.

On consideration whereof, it is now here ordered and adjudged by this Court
that the judgment of the said District Court, filed January 31, 1979,
be, and the same is hereby affirmed, with costs taxed against appellants.

TEST:

Thomas P. Fin
Clerk

June 5, 1979

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LOCAL 736, WILLIAMSPORT FIRE- : CIVIL NO. 78-1254
FIGHTERS, et al., :
Plaintiffs : Complaint filed 12/20/78
vs. : JUDGE NEALON
CITY OF WILLIAMSPORT, DANIEL :
KIRBY, MAYOR, et al, :

STIPULATION

1. This stipulation will serve in the place of cross-
motions for summary judgment. The question of jurisdiction/absten-
tion raised by the Defendants in the Motion to Dismiss shall be
decided by Your Honorable Court. In light of the fact that the
parties have agreed to a Civil Service hearing for the nine indi-
viduals, the stipulation and agreed statement of facts and the
remainder of the Motion to Dismiss need not be considered and
determined.

2. The Defendants will not oppose Civil Service hearings
for the nine individuals, if the individuals request such hearings.
The Civil Service hearings are to be held in accord with the pro-
cedure set forth in the Civil Service Act and the rules and regu-
lations which the Civil Service Board adopted pursuant to said
Act.

3. This stipulation constitutes notice to the City that the
firemen request a Civil Service hearing. The individuals will
so notify the Civil Service Commission.

4. The question submitted to the Court is whether the Civil
Service Board determines the scope of the Civil Service hearing
or whether Your Honorable Court should consider and define the

23 A

scope of the Civil Service hearing to be extended to the nine individuals. Used in this context, "scope" means the burden or standard of proof and the criteria governing what the Defendants must prove as a valid reason for the lay-offs.

5. Submitted to the Court is whether the nine firemen are entitled to maintain a class action on behalf of the city residents and taxpayers whose property may be endangered by the lay-offs and fire protection.

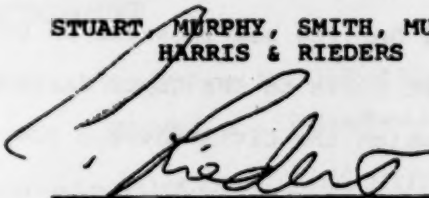
6. Submitted to the Court is whether assuming there is a danger to the city because of the lay-offs, is the class entitled to a due process hearing.

7. If the answer to the prior question is yes, what is the nature and scope of the hearing required by due process and has the city budget process satisfied the due process requirements for said class.

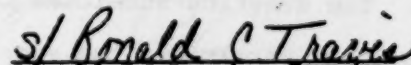
8. Submitted to the Court is the issue of the right of appeal for the class or the city with respect to law and facts found if a due process hearing is necessary.

Respectfully submitted,

STUART MURPHY, SMITH, MUSSINA,
HARRIS & RIEDERS


Clifford A. Rieders, Esquire
Attorneys for Plaintiffs

CANDOR, YOUNGMAN, GIBSON & GAULT


Ronald C. Travis, Esquire
Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LOCAL 736, WILLIAMSPORT FIRE-- CIVIL NO. 78-1254
FIGHTERS, et al.,
Plaintiffs : Complaint filed 12/20/78
vs. : JUDGE NEALON
CITY OF WILLIAMSPORT, DANIEL : JURY TRIAL DEMANDED
KIRBY, MAYOR, et al., :
Defendants :

AGREED STATEMENT OF FACTS

1. 53 P.S. section 37101 provides as follows:

Each city may organize a fire bureau, with or without pay, make appropriations for the maintenance of the same, prescribe rules and regulations for the government of the officers and companies belonging thereto, and purchase equipment and apparatus for the extinguishment, prevention and investigation of fires and for the public safety.

2. 53 P.S. section 37102 provides in pertinent part as follows:

When a paid fire bureau is organized by any city, the council may provide, by ordinance, for the election or appointment of the officers and companies belonging thereto, in accordance with civil service provisions where applicable.

3. Local 736, Williamsport Firefighters is an association whose members are firefighters within the city of Williamsport and whose membership includes Jonathan Smith, Dennis Sampson, Richard Emerick, Dennis Chilson, Daniel Hill, William Dochter, Harold Anthony, Jeffry Stone and Lawrence Biichle.

4. The individuals listed above received a letter dated December 1, 1978, from the Mayor of the City of Williamsport, Daniel P. Kirby, stating that said individuals would be laid off. The letter is attached hereto as Exhibit "A".

5. The individuals listed are residents and taxpayers of the City of Williamsport and persons protected by the Williamsport Firefighters.

6. The number of residents in the City of Williamsport who are protected by the Fire Department number approximately 35,000. The number of taxpayers who are protected by the City Fire Department number approximately 35,000.

7. Defendants are the City of Williamsport, its Mayor and the City Council.

8. The Defendants agree that they will not oppose a Civil Service hearing for the nine individual firemen if requested by them. Any such requested hearing shall be held pursuant to 53 P.S. section 39870 and 39871 et seq.

9. Defendants have not attempted to show in any forum that Plaintiffs are unneeded employees, that the removal of said employees would improve efficiency or that the suspension of the firemen would not jeopardize the public welfare. Neither the union, the nine individual firemen, nor any taxpayers of the City of Williamsport have made a specific request that the Defendants show that the nine individuals to be laid off are unneeded employees, that the removal of said employees would improve the efficiency of the department, or that the suspension of the firemen would not jeopardize public welfare. The contention by the Plaintiffs that the above-stated was a burden for the City was made known to the Defendants with the filing of the complaint in this case on December 20, 1978. The Plaintiffs maintain that the comments by the public at one or more counsel meetings constituted a demand that the above-stated criteria be met. It is the position of the Defendants that since they lay-offs are purely for economic reasons, the City need not show that the individuals laid off are

unneeded employees, the City need not show that the removal of said employees would improve the efficiency of the department, and the City need not show that the lay-offs of the employees would not jeopardize the public welfare.

9.1 That the reason assigned by the City for the lay-offs of the nine firemen were solely for reasons of economy.

9.2 For reasons of economy, thirty positions from the 1978 budget were eliminated in the 1979 budget, nine of these positions being vacant positions which were not filled, and the other twenty-one positions requiring lay-offs, and of the twenty-one individuals laid off, nine were firemen.

9.3 The remaining 21 are as follows:

9.3.1 From the Department of Public Safety - 1 Police

- 5 Civilians - 4 dispatchers

- 1 clerk

- 4 Vacancies in police through attrition were not filled.

9.3.2 From the Department of Public Services

- 2 Laborers in Streets Department - layoff

- 3 Laborers in Traffic Control - layoff

- 1 Laborer in Sign Shop - layoff

- 1 Utility Man in Traffic Control - layoff

9.3.3 From City Hall

- 1 Mayor's Secretary - layoff

- 1 Draftsman - layoff

- 1 Custodian - attrition

- 1 City Electrician - attrition

9.3.4 From the Fire Department

- 1 Vacancy by attrition

10. The only persons who reviewed the overall City budget for the purpose of making the budget cuts were City employees and members of Williamsport City Council.

11. In a memo dated July 7, 1978, Thomas D. Spitler presented to Mayor Kirby, Messrs. McDermott and Orso and Ms. Sutkins a schedule for the 1979 Budget Process. That memo is attached as Exhibit "B".

11.1 The schedule for administrative budget preparation and review is attached as Exhibit "C". In accordance with item 9, the City publicly received budget requests from the Department of Public Safety which did not include any manpower cuts or lay-offs.

12. On or about July 7, 1978, the Budget Process began by virtue of budget forms being sent to the directors of various city departments.

13. At a meeting of City Council held Thursday, December 14, 1978, beginning at 7:30 p.m., the following line items were presented and discussed by City Council:

- 242 Fire
- 244 Police
- 246 Civil Defense
- 240 Director of Public Safety
- 220 Director of Public Services
- 230 Director of Finance & Personnel

14. At a public meeting, Mr. McDermott, Director of Public Safety, was present and answered questions by City Council.

15. After the meeting, questions were permitted from the floor which included comments from firemen with respect to the lay-off of firemen.

16. In Mayor Kirby's Budget Message dated November 29, 1978, he announced the lay-off of city workers which was followed by his letter to the nine firemen dated December 1, 1978.

17. At the City Council meeting held on December 14, 1978, a number of individuals spoke from the floor, some of which concerned the lay-off of the firemen, but there was no hearing specifically for the purpose of the city presenting information or evidence to a fact finder with respect to whether the firemen were unneeded, would increase efficiency or would jeopardize the public welfare, with the opportunity for cross examination and presentation of evidence by the firefighters followed by findings of fact and conclusions of law by an impartial body. Counsel was not retained until after the December 14th meeting but Plaintiffs were not prevented from having counsel present.

18. There was no notice to the firemen, the union, the taxpayers, the residents or those protected by the firemen orally, via media or otherwise that an opportunity existed for a hearing at which the city and said individuals could present evidence on the three criteria listed above, subject to cross examination and with representation by counsel.

19. The comments made at the December 14th meeting, referred to above, followed a meeting beginning at 7:30 p.m. in which three ordinances were first discussed and voted upon together with three resolutions and ordinances, reports were accepted and filed by the City Comptroller, the Recreation Authority, Bureau of Environmental Control & Code Enforcement, Housing & Community Development, Water Authority, Sanitary Authority, S.P.C.A., and miscellaneous other matters. Thereafter "courtesy of the floor" followed at which the comments were made about the Fire Department. The meeting ended at 10:30 p.m.

20. The "courtesy of the floor" procedure was not limited to the firefighter's issue and the lay-off of the city firemen but permitted anyone to speak in conformity with the rules set forth

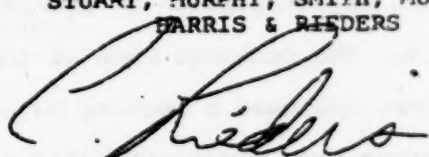
for such comments and which are contained in the minutes and ordinances of the City of Williamsport. The minutes of said meeting are attached hereto as Exhibit "D".

21. On December 7, 1978, a regular City Council meeting was held at which time "courtesy of the floor" was extended to the public and any members of the public who were present had an opportunity to speak on any matter consistent with the rules and ordinances of the City. See Exhibit "E" attached hereto for the December 7th minutes.

22. On December 21, 1978, a regular City Council meeting was held at which time "courtesy of the floor" was extended to the public and any members of the public who were present had an opportunity to speak on any matter consistent with the rules and ordinances of the City. See Exhibit "F" attached hereto for the December 21st minutes.

Respectfully submitted,

STUART, MURPHY, SMITH, MUSSINA,
HARRIS & RIEDERS



Clifford A. Rieders, Esquire
Attorneys for Plaintiffs

CANDOR, YOUNGMAN, GIBSON & GAULT

s/ Ronald C. Travis
Ronald C. Travis, Esquire
Attorneys for Defendants



MAYOR
DANIEL P. KIRBY
CITY HALL
434 PINE STREET

City of Williamsport
Williamsport
Pennsylvania

PHONE 326-2931
EXTENSION 39

December 1, 1978

Jonathan Smith
326 Brandon Avenue
Williamsport, PA 17701

Dear Jonathan:

As I am sure you are aware, the City is facing severe financial difficulties as we approach the 1979 calendar year. An increase in operating costs, combined with a decline in revenue, has forced me to make the devastating but inevitable decision to lay off a number of City employees.

It is with sincere regret that I tell you that you are one of those who will be affected. The layoff will take effect on December 29, 1978. Any remaining vacation time for which you are eligible should be used prior to this date.

This was not an easy decision to make, and I am extremely sorry that we could find no other way to solve this fiscal crisis. I thank you for your years of service to the City of Williamsport and sincerely hope that you are able to find suitable employment in the very near future.

Sincerely,

Daniel P. Kirby
Daniel P. Kirby,
Mayor

DPK:bjl

Exhibit "A"

MEMO

TO: Mayor Kirby, McDermott, Orso and Suckin.
 FROM: Thomas D. Spitzler
 SUBJECT: 1979 Budget Schedule
 DATE: July 7, 1978

Attached is the schedule for Budget Preparation and Review for the 1979 Budget. There are some significant changes this year of which you should be aware. The most significant is that there is a schedule. The dates listed are firm. Failure on your part to meet these dates will cause 1978 budget numbers to be automatically inserted in the appropriate 1979 line items. I realize that this is an arbitrary position for me to take but I think that by adhering to this schedule, we will find this work much easier to complete and the end of the year will be more pleasant for all of us.

Another important change this year is the scheduling of public hearings. The Revenue Sharing hearings are mandated by Federal Regulation. Our own City Code requires that we have at least one public hearing. I have scheduled four. This should give us a chance to present "our side" prior to even going to City Council. I believe this could be a tremendous advantage if we handle it right.

I think that it is very important that we get to work early on the budget and I am sure that I can count on your co-operation in getting the job done.

Exhibit "B"

SCHEDULE FOR BUDGET
 PREPARATION AND REVIEW

- | | |
|---|-------|
| 1. June Report and Budget Forms to Directors | 7/7 |
| 2. Budget Forms Returned to Finance Department. | 8/11 |
| 3. Review by Department and Director of Finance | 9/1 |
| 4. Income Estimates Completed | 9/8 |
| 5. Review by Mayor and Department Heads | 9/13 |
| 6. Compare Budget with Income Estimates | 9/15 |
| 7. Public Hearing No. One - Revenue Sharing | 9/20 |
| 8. Public Hearing No. Two - Revenue Sharing | 9/27 |
| 9. Public Hearing - Department of Public Safety | 10/4 |
| 10. Public Hearing - Department of Public Services | 10/11 |
| 11. Public Hearing - Department of Finance and Personnel | 10/18 |
| 12. Public Hearing - Offices of Treasurer, Controller,
City Council, City Clerk, Bureau of Law | 10/25 |
| 13. Final Review by Mayor | 11/1 |
| 14. Presentation to City Council | 11/8 |

Exhibit "C"

MEMORANDUM

TO: MAYOR KIRBY, DR. CHARLES PAGANA, DR. RANDALL HIPPLE,
THOMAS BAILEY, CARL CURCHOE, CARL HUNTER, STEPHEN
LUCASI, MARVIN STAIMAN, JOHN McDERMOTT, ROBERT ORSO,
THOMAS SPITLER, WALTER BUBB, WILLIAM STROUSE, CHARLES
MAHAFFEY, VINCENT MANCINE, WILLIAM NICHOLS

FROM: DANIEL BROSNAN

RE: BUDGET HEARINGS

The following schedule has been established for the review of the 1979 City Budget by City Council. Please be prepared to attend any meeting concerning your budget in order to answer any possible questions.

Please see me if you have any questions.

Wednesday December 6 :

General Fund Income, PP. 3-5
Sinking Fund, P. 1
500 Utility Fund (Bureau of Transportation) PP. 30-31
Capital Projects Fund, P. 32
Downtown Mall Fund, P. 33
Liquid Fuels Fund, P. 34
City Hall Operating Fund, P. 35
Parking Revenue Fund PP. 36-37
Revenue Sharing Fund, P. 38

Thursday December 7 :

110 City Council, P. 7
120 City Clerk, P. 8
130 City Solicitor, P. 9
300 City Controller, P. 28
400 City Treasurer, P.29
210 Mayor, P. 10
232 Accounts and Finance, P.21
234 Purchasing, P.22
236 Human Resources, P.23

EXHIBIT C/SPITLER #2

34A

(Cont'd.)

Wednesday December 13 :

221 Engineering, P.12
222 Recreation and Parks, P.13
223 Recreation Programs, P.14
224 Parks, P.15
225 Codes, P.16
226 Traffic Control & Property, P.17
227 Streets, P.18
228 Flood Control, P.19

Thursday December 14 :

242 Fire, P.25
244 Police, P.26
246 Civil Defense, P.27
240 Director of Public Safety, P.24
220 Director of Public Services, P.11
230 Director of Finance & Personnel, P.20

35A

minutes for meeting of November 29, 1978 (cont'd)

I would like to talk about a volunteer fire department. I know Mayor does not like this. It would be well if our Mayor would discuss this matter. It is not a case where you will fire your firefighters. It is a case where it is a necessity. The Polk Directory lists Williamsport as a city of 35,000 population. You will always have to have a fully paid police department but how are you going to manage to have a fully paid fire department.

Dr. Syssen - We have given this a lot of thought. I agree with you one hundred percent. To go from a fully paid to a volunteer force it must go on a referendum. Voters must vote for this (Solicitor's opinion). Our Public Safety Director has traveled to several cities to look into this matter.

Mayor - There is no such thing as a volunteer fire department. It is not as simple as it sounds. You must realize this is an old city.

Mr. Syssen - We compare ourselves to cities that are two or three times our size. We should go to cities that are in our category. Why have we not considered a metropolitan government which would take in surrounding communities such as Nisbet, Linden, Old Lycoming and etc. You would have something to talk about then. Have all one community.

Dr. Hipple - How would you do it?

Mr. Syssen - Start a promotion.

Upon a motion by Mr. Curchoe, seconded by Mr. Bailey council adjourned meeting with a vote of 7 yeas.

Elda C. Pagana
Elda C. Pagana, City Clerk

December 7, 1978
Williamsport, Pa.

A meeting of Williamsport City Council held on December 7th, 1978 at 7:30 P. M. at the Lycoming County Court House, Court Room #3, Williamsport, Pennsylvania.

The meeting was called to order by Council President, Charles N. Pagana at 7:30 P.M.

The following members of City Council were present:

Dr. Charles N. Pagana, President
Dr. Randall F. Hipple, Vice President
Mr. Carl N. Hunter, Councilman
Mr. Carl A. Curchoe, Councilman
Mr. Stephen J. Lucasi, Councilman
Mr. Thomas E. Bailey, Councilman
Mr. Marvin H. Stalman, Councilman

Also present: Mayor Daniel P. Kirby, Mr. Michael J. Casale, City Solicitor; Mr. Ronald C. Travis, Assistant Solicitor; Mr. Thomas D. Spittler, Director of Accounts and Finance; Mr. Daniel Brownan, Finance Aid; Mr. Robert L. Orson, Director of Public Services; Mr. John McBurnett, Director of Public Safety; Mr. William J. Strouse, City Controller; Mr. John Grady, City Engineer; Mr. John Peters, Codes Administrator; Mr. Howard Chambers, Director of Community Development.

Invocation was given by Councilman Curchoe followed by the salute to the flag.

Upon a motion by Mr. Lucasi, seconded by Mr. Stalman council accepted and approved the minutes for meeting dated November 14th, 1978, as submitted. Motion carried with a vote of 7 yeas.

Upon a motion by Dr. Hipple, seconded by Mr. Hunter an ordinance known as Council Bill # 386-78, ordinance # 4938, passed final reading with a roll call vote of 7 yeas.

AN ORDINANCE

AUTHORIZING CERTAIN TRANSFERS IN 1978 GENERAL FUND APPROPRIATIONS.

BE IT HEREBY ORDAINED, that the following transfers in appropriations be made:

SECTION I:

From:	Recreation - Office of the Administrator		
	Subscriptions and Memberships	222272	\$ 174.00
	Recreation Program		
	Salaries	223101	\$1,212.00
	Facility Maintenance	223277	2,000.00
	Recreation Program	223281	1,000.00
	Art Supplies	223291	1,376.00
	Athletic Equipment	223350	400.00
	Parks		
	Overtime	224108	1,000.00
	New Trees, Flowers, Shrubs	224381	609.00
			\$7,771.00

SECTION II:

To:	Recreation - Office of the Administrator		
	General Office	222301	700.00
	Recreation Program		
	Swim Pool Wages	223103	1,685.00
	Swim Pool Wages - Brandon	223104	1,345.00
	Concession Materials	223406	1,575.00
	Parks		
	Seasonal	224122	1,466.00
	Repairs to Vehicles	224402	1,000.00
			\$7,771.00

SECTION III:

BE IT FURTHER ORDAINED, that this ordinance take full force and effect upon final passage.

Enacted this 7th day of December 1978.

Upon a motion by Mr. Hunter, seconded by Mr. Lucasi an ordinance known as Council Bill # 387-78, ordinance # 4939 passed final reading with a roll call vote of 7 yeas.

AN ORDINANCE

AN ORDINANCE VACATING A PORTION OF BAKER STREET SITUATED IN THE SEVENTH WARD OF THE CITY OF WILLIAMSPORT, PENNSYLVANIA.

NOW, THEREFORE, be it ordained by the Council of the City of Williamsport Pennsylvania, and it is hereby enacted under authority of the same as follows:

SECTION I: That the following hereinafter described portion of Baker Street situated in the Seventh Ward of the City of Williamsport, Pennsylvania, be and the same is hereby vacated for public use:

BEGINNING at the intersection of the southern line of Baker Street and the eastern line of Pearl Street. Thence from the said place of beginning, crossing Baker Street, north 6 degrees 30 minutes west 30.00 feet to a point on the northern line of Baker Street. Thence along the northern line of Baker Street, north 83 degrees 30 minutes east 127.00 feet to

Ordinance:
4938

Authorizing
transfer in
General Fund
appropriations

(Bureau of
Rec. & Park

final
reading:

Ordinance:
#4939

Vacating a
portion of
Baker Street

(final reading)

minutes for meeting of December 7th, 1978 (cont'd)

a point at the intersection of the northern line of Baker Street and the new western line of Huckleberry Alley. Thence crossing Baker Street, south 6 degrees 30 minutes east 30.00 feet to a point on the southern line of Baker Street. Thence along the southern line of Baker Street, south 83 degrees 30 minutes west 127.00 feet to the place of the beginning.

SECTION II: That this ordinance is to go into effect within the prescribed time allotted by law.

Enacted this 7th day of December, 1978.

Ordinance:
(first
reading)

Upon a motion by Mr. Staiman, seconded by Dr. Hipple an ordinance amending Ordinance #4891, Article 113 of the Codified Ordinances of the City of Williamsport authorizing contracts by resolution passed first reading with a roll call vote of 7 yeas.

Discussion:

Mr. Howard Chambers, Director of Community Development - The reason this came up is we are trying to expedite rehab of CETA property. We are going to contract out several of these and prices we were getting were close to \$2,000. We were recently made aware of the \$2500. limit which would make it easier for us. Also it would be easier for Mr. Orso for bidding.

Mr. Casale, City Solicitor also agreed with the above ordinance whereby it would be permissible to award contracts under 2500. without following bidding requirements.

Ordinance:
(first reading)

Upon a motion by Mr. Curchoe, seconded by Mr. Staiman an ordinance amending Article 1703 of the Codified Ordinance of the City of Williamsport by amending Section 1703.15 (Installation of Electrical Wiring: Standards) be installed in accordance with nationally recognized good practice on matters not covered in this code, and the 1978 edition of the National Electric Code of the National Fire Protection Association passed first reading with a roll call vote of 7 yeas.

Discussion:

Mr. Peters, Codes Administrator- We have amended codes in the past. Every few years codes are amended. I have reviewed this code and I note most of the changes are more in reference. Updating rating system for buildings. Updated emergency system. This change has been approved by the administration and the Williamsport Fire Department.

Ordinance:
(first reading)

Upon a motion by Mr. Hunter, seconded by Mr. Curchoe an ordinance authorizing a transfer in 1978 General Fund appropriations in the total amount of \$2,600.78 passed first reading with a roll call vote of 7 yeas.

Discussion:

Mr. Spittler, Director of Finance - Charges we paid school district for paying our taxes. We normally receive from them what expense will run. We have now received final bill and made adjustments.

Resolution
3268
Construction of
a water line on
Lycoming Street:

Upon a motion by Mr. Staiman, seconded by Mr. Lucasi a resolution authorizing the proper city officials to execute an agreement between the City of Williamsport and the Williamsport Municipal Water Authority for the construction of a water line on Lycoming Street passed with a vote of 7 yeas.

RESOLUTION

BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY of Williamsport that the appropriate city officials be designated to execute the attached Agreement by and between the City of Williamsport and the Williamsport Municipal Water Authority.

Discussion:

Mr. Howard Chambers, Community Development Director had submitted the following memorandum to City Council on the need of a 12" water line on Lycoming Street.

MEMORANDUM

Date : November 29, 1978
To : Mayor Daniel P. Kirby & members of City Council
From : Howard F. Chambers, Jr.
Subject: Construction of Water Line - Lycoming Street

Approximately 3 months ago, I approached the Williamsport Municipal Water Authority with the problem of the need for the construction of a 12" water line to be constructed on Lycoming Street between Center and Walnut within the West Edwin Street Project.

At the time, the City was in the process of replacing our City Engineer and since this work had to be done as quickly as possible, I approached Vernon Fry with the problem and asked if the Authority could prepare specifications and bid the job through their organization subject to final approval of City Council.

This was recently accomplished and the apparent low bidder was Frank Wolyniec and Sons, Inc. The Authority proceeded with an action to award this bid to Wolyniec subject to final approval of City Council. The administration has met and reviewed the specifications, bids and personally met with Mr. Fry to discuss and "iron out" any problems that we found relevant. In addition, the assistant city solicitor has reviewed and ok'd the attached agreement between the Authority and the City and found it to be in proper order.

It is the administration's recommendation that City Council concur in the action of the Williamsport Water Authority. The money to pay for this line will come from the Williamsport Community Development Budget, Public Works Site Improvement Account for a previously approved activity.

Mr. Chambers - I have a list of bidders and amount if you wish to review them. We concur on low bid award. The quote will expire on December 31, 1978- bid amount for total job - \$30,000. We concur with Water Authority action- money to come from Community Development budget.

Upon a motion by Mr. Staiman, seconded by Mr. Bailey a resolution awarding the heating, ventilation and air-conditioning bid for the Williamsport Fire Station #1 in the West Edwin Street Project passed with a vote of 7 yeas.

RESOLUTION

BE IT HEREBY RESOLVED that the contract for heating, ventilation and air-conditioning for new City of Williamsport Fire Station #1 located in the West Edwin Street project area (in area bounded by Edwin, Lycoming, Walnut and Cedar Avenue) be awarded to Pickelner Heating, 210 Locust Street, Williamsport, Pennsylvania in the total amount of \$65,939. as per attached bid. Source of funding- Community Development, account #00-4840, Fire Station #1.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to successful bidder.

Mr. Orso - We feel this is a good price--under estimate. The deduct stays in. Dr. Hipple- How much under is this bid?

Mr. Orso - A saving of \$5,061. Job conference is scheduled for Monday, December 11, 1978.

Upon a motion by Mr. Curchoe, seconded by Mr. Hunter a resolution approving a change order for Cemetery Run Contract 4-B passed with a vote of 7 yeas.

RESOLUTION

BE IT HEREBY RESOLVED that the following change order to Cemetery Run Contract 4-B be made as listed below and hereto attached to Frank Wolyniec & Sons, Inc., 1500 Freedom Road, Williamsport, Pennsylvania. The total amount of change order is a deduct for \$18,246.25.

John Grado, City Engineer- Due to the charge in pipe we were able to save over \$18,000. for the City. Changed from an elliptical to 36" round pipe.

Dr. Pagana - Will deduct come back into contingency?

Mr. Spittler- No money stays there until project completed. When completed reverts back to contingency.

Resolution
3269

Awarding (HVAC)
contract for
Fire Station
#1

Resolution
3270

Change order
for Cemetery
Run Project
4-B

minutes for meeting of December 7, 1978 (cont'd)

Reports:

Upon a motion by Mr. Bailey, seconded by Mr. Stalman council accepted and placed on file the Williamsport Sanitary Authority minutes dated November 1, 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Lucasi, seconded by Mr. Bailey council accepted and placed on file the Williamsport Water Authority (report on operation of water system for period 7/1/78 to 9/30/78.) Motion carried with a vote of 7 yeas.

Motion by Mr. Hunter, seconded by Mr. Curchoe council accepted and placed on file the White Deer Golf Course, operational report for week ending November 19th, 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Curchoe, seconded by Mr. Lucasi council accepted and placed on file the Recreation Authority minutes dated November 14th, 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Stalman, seconded by Dr. Hipple council accepted and placed on file the White Deer year-to-date revenue report dated November 26th, 1978. Motion carried with a vote of 7 yeas.

Courtesy of the floor:

Mr. Pete Salvatori, Lewisburg, Pa. (Representing AFSME Union) - Council has increased funding for City Clerk, City Treasurer and City Controller's office. Why have they been allotted more money?

Mr. Spitler- The salary increase is 5.5% for all city employees. With the move to new City Hall we have determined to rent space to each department and we are going to charge them rent. That is what has driven these departments up.

Dr. Pagana - Each department is being charged rent for new City Hall space. Also all advertising for entire City Hall comes through City Clerk's office at present time. The audit for the City is not going into Finance any longer but through the City Controller's office. Salaries are all at 5.5% with the same number of people.

Mr. Salvatori- Why does small guy have to be singled out and made a goat of?

Dr. Pagana - That is your opinion.

Mr. Salvatori- Last year the Public Services Department employees were out giving their best during snowstorm and is this the way City Council is showing their appreciation to dedicated people. These seven men that are being furloughed are taxpayers of the city and should be given some consideration. I'm making an urgent appeal to take a second look at this budget. I'm sure you can find ways and means to find the money. I'm sure if you can give them their jobs back - it would be best Xmas gift of all.

Mr. William Levinson- 519 W. Fourth Street - City is going to lay off nine firemen. Mr. Curchoe comes up with thirty police. If someone reports off sick or on vacation what happens then. This idea just doesn't make sense. There are places in budget where some "dead wood" could be cut out and use some of that money to leave the nine firemen on and the police. What are you going to do for police? How can you run department with only thirty men?

Mr. Arthur Smith, 730 High St. Williamsport, Pa. - Does council have the power to change the three minutes allowed an individual to address council at end of meeting?

Dr. Pagana - Yes.

George Bebbie, 1140 Isabella Street - I believe who is figuring out this budget better look over demolition within the city and see why we don't have enough tax dollars.

A five minute adjournment was called for at this time before going into budget review.

Upon a motion by Mr. Curchoe, seconded by Mr. Lucasi council adjourned meeting with a vote of 7 yeas.

December 14, 1978
Williamsport, Penna.

A meeting of Williamsport City Council was held on December 14th, 1978 at the Lycoming County Court House, Court Room #3 at 7:30 P. M.

The meeting was called to order by Charles M. Pagana, President of Williamsport City Council..

The following members of City Council were present:

Dr. Charles M. Pagana, President
Dr. Randall F. Hipple, Vice President
Mr. Carl M. Hunter, Councilman
Mr. Carl A. Curchoe, Councilman
Mr. Stephen J. Lucasi, Councilman
Mr. Thomas E. Bailey, Councilman
Mr. Marvin H. Stalman, Councilman

Also present: Mayor Daniel P. Kirby, Mr. Michael J. Casale, City Solicitor; Mr. Ronald C. Travis, Assistant Solicitor; Mr. Thomas D. Spitler, Director of Finance; Mr. Daniel Brosnan, Finance Aid; Mr. Robert L. Orso, Director of Public Services; Mr. John M. McDermott, Director of Public Safety; Mr. William J. Strouse, City Controller; Mr. Thomas Woodring, Deputy Controller; Mr. John Grado, City Engineer; Mr. Howard Chambers, Director of Community Development.

The invocation was given by Councilman Lucasi followed by the salute to the flag.

Upon a motion by Mr. Curchoe, seconded by Mr. Lucasi council accepted and approved the minutes for meeting dated November 29th, 1978. Motion carried with a vote of 6 yeas. Mr. Stalman not present at this time.

Upon a motion by Mr. Hunter, seconded by Mr. Curchoe an ordinance known as Council Bill # 388-78, ordinance # 4940 passed final reading with a roll call vote of 6 yeas. Mr. Stalman not present at this time.

AN ORDINANCE

AMENDING ORDINANCE #4891, Article 113 of the Codified Ordinances of the City of Williamsport authorizing contracts by resolution.

WHEREAS, the Legislature of the Commonwealth of Pennsylvania by Act #239 of 1978 amended the Third Class City Code to permit awarding of contracts under twenty-five hundred dollars (\$2,500.00) without following bidding requirements.

BE IT HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF WILLIAMSPORT AND IT IS HEREBY ENACTED UNDER AUTHORITY OF THE SAME THAT:

SECTION I: Article 113.01 (b) of the Codified ordinances of the City of Williamsport be changed to read:

(b) This section applies only to contracts in excess of twenty-five hundred dollars unless amended by law.

SECTION II: This ordinance shall take effect at the earliest date permitted by law.

Enacted this 14th day of December, 1978.

Ordinance:
#4940

Amending ord.
#4891, allowing city to enter into contracts up to \$2500.

(final reading)

Upon a motion by Mr. Lucasi, seconded by Dr. Hipple an ordinance known as Council Bill # 389-78, ordinance # 4941 passed final reading with a roll call vote of 6 yeas. Mr. Stalman not present at this time.

minutes for meeting dated December 14, 1978 (cont'd)

AN ORDINANCE

Ordinance:
4941Amending Art.
1703 sec.1703.15 Installa-
tion of electrical
wiring: standards:

(final reading)

An ordinance amending Article 1703 of the Codified Ordinance of the City of Williamsport by amending Section 1703.15 (Installation of Electrical Wiring: Standards.)

BE IT ORDAINED by the City Council of the City of Williamsport, and it is the ordinance hereby ordained by authority of the same.

SECTION 1:
"1703.15 Installation of Electrical Wiring: Standards:

NBC 1500 entitle "Conformance and Installation" is amended to read as follows:

Electric wiring systems shall be installed in accordance with nationally recognized good practice on matters not covered in this code, and the 1978 edition of the National Electric Code of the National Fire Protection Association.

SECTION 2:

In all other respects the provisions of Article 1703 shall remain in full force and effect.

Enacted this 14th day of December 1978.

Upon a motion by Mr. Curchoe, seconded by Mr. Hunter an ordinance known as Council Bill # 390-78, ordinance # 4942 passed final reading with a roll call vote of 6 yeas. Mr. Staiman not present at this time.

AN ORDINANCE

Ordinance:
#4942Authorizing a
transfer in
General Fund
appropriations
(Office of Tax
Collector)

(final reading)

AUTHORIZING A TRANSFER IN 1978 GENERAL FUND APPROPRIATIONS

BE IT HEREBY ORDAINED, that the following transfer in appropriations be made:

SECTION I:

From:	Office of Tax Collector		
	Purchase of Service		
	Joint Tax Office	400-271	\$2,600.78

SECTION II:

To:	Office of Tax Collector		
	Purchase of Service		
	Delinquent Tax Office	400-273	2,340.98
	Mer., B/P & OP Tax Office	400-274	59.80
			\$2,600.78

SECTION III:

BE IT FURTHER ORDAINED, that this ordinance take full force and effect upon final passage.

Enacted this 14th day of December, 1978.

Ordinance:

(first reading)

Upon a motion by Mr. Hunter, seconded by Dr. Hipple an ordinance authorizing a transfer in General Fund Appropriations for the Department of Public Safety in the amount of \$26,876.00 passed first reading with a roll call vote of 6 yeas. Mr. Staiman not present at this time.

Discussion: Mr. John McDermott, Director of Public Safety- We were short in certain line items in the budget, such as, life insurance, laundry, repairs to vehicles general office, overtime and money is coming from the account designated salaries of Police. They were the police not replaced during the year.

Upon a motion by Dr. Hipple, seconded by Mr. Curchoe a resolution honoring Mr. Walter Bubb, City Treasurer for his many years of service to the City and who passed away on December 10th, 1978 passed with a vote of 6 yeas. Mr. Staiman not present at this time.

RESOLUTION

WHEREAS, Almighty God has called unto his Kingdom Walter Jerome Bubb, and

WHEREAS, the sudden death of Walter Jerome Bubb caused a tremendous loss and shock to this whole community, and

WHEREAS, the contributions this man has made to our community have been great and cover the fields of municipal government, public service, religious and family life, and

WHEREAS, specifically Walter Jerome Bubb served the government of the City of Williamsport, first as City Councilman under the Commission form of government as the Director of Parks and Public Property from nineteen hundred and fifty-three until nineteen hundred and sixty. Mr. Bubb was presently serving his fourth term as City Treasurer of the City of Williamsport being elected to this office in nineteen hundred and sixty-four.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILLIAMSPORT, PENNSYLVANIA and it is hereby ordained and enacted by authority of the same that the Mayor and City Council of the City of Williamsport hereby publicly attests to the high esteem with which it holds the memory of this valued public servant and hereby publicly attests to the tremendous loss this community has suffered in his passing. The Mayor and City Council hope that this expression will in some way lighten the burden of the loss suffered by the family of the late Walter Jerome Bubb, our deceased colleague.

BE IT FURTHER RESOLVED, that this resolution be spread upon the minutes of the City of Williamsport and a copy of said resolution be transmitted to the family of the late Walter Jerome Bubb.

COUNCILMAN STAIMAN NOW PRESENT.

Upon a motion by Mr. Hunter, seconded by Dr. Hipple a resolution awarding CETA Rehab structures passed with a vote of 7 yeas.

RESOLUTION

RESOLUTION APPROVING WILLIAMSPORT HOMESTEAD SELECTION BOARDS' AWARDING OF C.E.T.A. REHAB STRUCTURES.

BE IT HEREBY RESOLVED THAT:

WHEREAS, the Homestead Selection Board has awarded the property of 426 Center Street, as per the attached description of Lot 37, to Mr. and Mrs. Lawrence E. Moore for the amount of \$23,000.00 payable upon the designated settlement date;

AND WHEREAS, the Homestead Selection Board has awarded the property of 435 Locust Street, as per the attached description of Lot 4, to Mr. and Mrs. Thomas G. Steinbacher for the amount of \$24,500.00 payable upon the designated settlement date.

THEREFORE BE IT HEREBY RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WILLIAMSPORT that the action as taken by the Williamsport Homestead Selection Board on November 21, 1978 is approved as stated.

Resolution
3271

In memory of
Mr. Walter
Bubb who passed
away on 12/10/78

Resolution
#3272

Approving
Homestead
Selection Bd,
awarding of
CETA Rehab
structures:

minutes for meeting of December 14, 1978 (cont'd)

Upon a motion by Mr. Curchoe, seconded by Mr. Lucasi a resolution amending the Citizen Participation Plan for Community Development passed with a vote of 7 yeas.

RESOLUTION

WHEREAS, the Department of Housing and Urban Development has reviewed the City of Williamsport's Citizen Participation Plan for Community Development as adopted on August 1st, 1978 per resolution # 3218.

AND WHEREAS, H. U. D. has submitted review comments to the Community Development Director concerning the Citizen Participation Plan.

AND WHEREAS, H. U. D. has requested that the sections of Citizen Participation Plan be amended as follows:

Sections A, C, D, I, J. and N.

NOW, THEREFORE, be it resolved by the City Council of the City of Williamsport that the attached Citizen Participation Plan as amended is hereby adopted as the Official Citizen Participation Plan of the City of Williamsport.

Mr. Wayne Roller, City Planner:- Few changes--just additions.

Under (a) - Goes into more detail so person reading plan can understand it better.

(c) - Naming two (2) radio stations

(c-1) - deleted putting responsibility on us to select all advisory committees.

(d) - Scope of Participation - How to have meetings and hearings.

(I, J & N) - additional information--being more explicit on hearings and amendments to hearings and what type of participation is needed on amendment.

Reports: -

Upon a motion by Mr. Staiman, seconded by Mr. Curchoe council accepted and placed on file the City Controller's report for November 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Lucasi, seconded by Mr. Bailey council accepted and placed on file the Recreation Authority list of disbursements for November 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Hunter, seconded by Mr. Staiman council accepted and placed on file the Bureau of Environmental Control and Code Enforcement for November 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Curchoe, seconded by Mr. Lucasi council accepted and placed on file the Housing and Community Development report for FY 77-78 (third year). Motion carried with a vote of 7 yeas.

Motion by Mr. Bailey, seconded by Mr. Staiman council accepted and placed on file the Housing and Community Development report for FY 78-79 (fourth year). Motion carried with a vote of 7 yeas.

Motion by Mr. Staiman, seconded by Mr. Lucasi council accepted and placed on file the Williamsport Water Authority, 31st annual report FY ending 6/30/78. Motion carried with a vote of 7 yeas.

Motion by Mr. Curchoe, seconded by Mr. Hunter council accepted and placed on file the Williamsport Sanitary Authority-25th annual report for FY ending June 30, 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Curchoe, seconded by Mr. Hunter council accepted and placed on file the Williamsport Sanitary Authority report on operation of sewer system. Motion carried with a vote of 7 yeas.

Motion by Mr. Staiman, seconded by Mr. Lucasi council accepted and placed on file the Williamsport Sanitary Authority report on operation of sewer system for period July 1, 1978 to September 30, 1978. Motion carried with a vote of 7 yeas.

Resolution
#3273

Amending Citizen Participation Plan for Community Development:

Miss Margaret Megahan, S. P. C. A. - I'm here representing SPCA to try to tell you, not to ask for more money but what we will have to do when we open on January 2nd, 1979.

(explaining cut in services)

We are facing a deficit and we have no place to turn for additional funding. On January 2nd we will have to announce to the city and citizens that all pick-up service by SPCA in city limits will have to cease. I feel that I would be less than fair to all you men that have chosen to run our city not to come to you and tell you what is involved. The calls will have to come to the City police department. Somebody will have to pick up those animals. That means a vehicle to pick them up and a driver. Very often two people. We have no other choice. We have exhausted every means and avenue to turn to. On December 1st we already gave \$41,000. of service. We wish we could go on and not make a cut. This is the first time we ever had to make a cut. As of January, we have to make it. The city must be prepared to be deluged with calls that will come to you. We will continue to give full emergency service and all investigations. We will take into care all animals that are brought to us.

Dr. Pagana - Do you intend to cut in areas such as Loyalsock, Jersey Shore, etc. You are not only cutting city?

Miss Megahan- We will cut all places that cannot meet our requests. Loyalsock, City of Williamsport, South Williamsport and Muncy.

Dr. Pagana - Have the County Commissioners met your request? We are part of the county. We are a population of 35,000 and we offered to give city share of \$6,000. Loyalsock should have come up or else we should only give \$1700. - Jersey Shore-\$250.--we want to be equitable to all parties involved.

Mr. Curchoe - You are not doing it in a fair manner. I'm only asking for fairness and justice. What have you asked of Old Lycoming Township?

Miss Megahan- Last year was first year and they contributed \$150.00. They paid nothing in the past.

Mr. Hunter - Have you asked County Commissioners for additional funds?

Dr. Pagana - I would like council to consider that for an additional \$4,500. you get back services with SPCA to pick up dogs. It is not equitable situation. We are Third Class City and we have to pick up dogs if they don't. This is first time she is willing to cut townships and boroughs. Continue to battle on through the year and hope county will pick up whole thing. Keeping in mind \$10,500. to maintain services and keeping in mind that Miss Megahan will cut back services to outlying communities. Services not be given to communities who have not met request.

Miss Megahan- For \$10,500. city will receive full service for 1979.

Upon a motion by Mr. Curchoe, seconded by Mr. Staiman council to give SPCA total of \$10,500. for 1979 with money to come from legislative contingency fund. Also if we can get together and work out a fair solution with boroughs and townships. Motion carried with a vote of 5 yeas and 2 nays. Dr. Nipple and Mr. Hunter voting nay.

Increase contribution to SPCA:

Courtesy of the floor:

Mr. Pete Salvatori, Lewisburg, Pa. (representing AFSNE Union employees) Asked for an explanation to the \$267,000. designated as Liquid Fuel funds.

Dr. Pagana - On page 34 of budget book it explains where the entire amount is going. Mr. Salvatori- How much is city going to save on furloughs compared to amount of money it will cost them on unemployment compensation?

Mr. Brosnan, Finance Aid- I don't have that figure with me tonight.

Mr. Salvatori stated that he again wanted to make an urgent plea that the best Xmas present the City could give the laid off employees would be to give them their jobs back. This of course goes for all departments.

Mr. Robert Weaver, Pres. Firefighters Union- We received 1311 cards and have 1,325 signatures on petitions asking to keep on firemen. I hope council does not ignore this public input. Local is looking into a law firm to place an injunction against city under public health and welfare.

minutes for meeting of December 14, 1978 (cont'd)

Mr. John Fry, Devey Avenue - Isn't it the responsibility of dog catcher to pick up dogs? Don't we pay someone to do that?

Mr. Casale, City Solicitor- We have a state dog catcher who does it in conjunction with SPCA. We have two men for a four county area.

Mr. Dave Snyder, 305 Woodland Ave. - You are jeopardizing public—I charge you City Councilmen not to lay off any public safety employees.

Mr. Charles Brooks, 1665 Pinecrest Dr. (city property owner) I'm concerned with cut-back on police and fire departments. I had a bad fire recently and a robbery last Saturday evening. If the fire I had last year would have not been caught when it was it would have taken a whole city block. I don't know how you can cut back on fire and police in good conscience.

Mr. James Karnes, 823 Second Street - City Council is thinking of buying a council table for \$8,000. and another \$100,000. to be used to purchase furniture—I can't see how you can justify this when you are cutting 9 men to get that money.

Mr. J. Esposito, 2821 W. Fourth St. - I'm EMT on Rescue #19 which average between 70 to 80 runs a month. When Rescue #9 out on call #19 runs entire city. City will have to revert back to the use of only one ambulance for entire city. Also by cutting you will be removing several Emergency Medical Technicians. I implore you not to cut department. We need every man. Take a study of the Fire Department, work with us for three or four months. If you cut department you are going to lose lives.

Mr. William Levinson, W. Fourth Street- Like to congratulate council that they did not take advantage of Mr. Curchoe's request and cut Police Department. You need police to cut crime. Why some of the "dead wood" can't be eliminated within Mayor's administration, I don't know. I have been at City Hall and I know who they are. They don't earn their salt. The Mayor not only has a secretary but he has an aid. Secretary was cut but she was really placed in Mr. McDermott's office. Why can't we get rid of "dead wood."

Mayor Kirby - Job was eliminated.

Mr. Levinson- How about other "dead wood." If you can give raise to SPCA why can't you come up with money for Fire Department.

Mr. Matt Kitho-688 Grier St. - I don't know where Mr. Spittler is getting figure to keep pension fund sound. The actuary study states \$25,000 per year to keep fund on sound basis. In 1964 the amount of \$9700. was placed in fund with \$22,000. going to city employee fund. In 1967 \$12,500. placed in fire fund with \$41,000. going to city employee fund. This trend has caused our fund to fall below normal status. We have reduced some of the benefits. We are paying larger contributions and we have the use of an investment advisor. Two days ago our advisor stated that our fund is \$160,000. more then last year. Contributions during this administration have been up (doubled.)
1972- \$25,000; 1973-\$31,000.; 1974-\$57,000.; 1975- \$98,000.; 1976-\$106,000.; 1977- \$225,000.; and 1978--\$240,000.

Mr. Pagana- Could I draw a parallel—4% of pay with full Blue Cross/Blue Shield. Benefits of factory worker - 6.7% social security and Blue Cross/Blue Shield does not continue. Our new firemen now come under the 55/30 pension fund. If this union so concerned maybe they would be willing to talk to the Board and be willing to follow same guidelines as new firemen.

Mr. Sampson, W. Third Street - Factory people get overtime. I work 36 hours per week and do not get anything for over 40 hours. I get called into a fire— \$3.55 per hour is what it amounts to. I would be better off working in a factory.

Mr. Chilson-105 West Hills Dr.- This city one of the largest cities with industry in area. If we don't protect citizens of outlying areas when they come to work these industries will move out. Many, many people must be considered for public safety not just the residents. A lot of people work here. What would have happened several years ago when churches burned with only 47 firemen? If you made mistake with Center City Hall, we don't want to pay for mall with our lives or our children's. We cannot function with fewer firemen.

Mr. Alan Hillman, Lincoln Ave.- Does city own idle property, if so what is market value and why can't it be sold and placed back on tax rolls? How much property did city sell last year?

Mr. Harold Anthony, 337 Walnut Street- Are they planning on hiring firemen back after men retire or are you going to hire men back when a vacancy occurs?

Dr. Pagana - When that line item opens firemen will be called back unless budgeted amount and line item are deleted.

Mr. Chilson-105 West Hills Dr. - Are you people aware how long it will take to get into Newberry with a truck? What happened to money for the remodeling of #6? What is going to happen now? It is about time you people realize that most of the people along the line have voted for you. Fire truck over on Depot Street— if truck gets caught over there by a train you better call Woodward Township.

Mr. F. Needley, 663 First Avenue - In 1972 heard that 14 firemen were forced to retire. Six were given layoffs. Now there is talk to again cut back on some firemen. Also trouble with pension fund. The city really needs fire department. Some City Hall employees could also be cut back. The only money cut back in the budget was \$22,000. We need an administration here that would try to root out some "dead wood" and get problems down to some basics. This is government of the people.

Mr. Carl Fuller, Newberry - We are going to get a 5% will increase. You are getting a new fire house. How much did you put into new City Hall? When you lay off by seniority you knock them off not decrease person to another position. Someone should have been laid off.

Mr. Pete Logan, Linn Street - Our Fire Chief with over thirty-one years on the department was not contacted on anything on the budget. The gentleman who drew up budget for fire department has had twenty years service with the Police Department. What does he know about the operations of the Fire Department.

Mr. N. Marchese, Tucker Street- Several things— First off a dog catcher will pick up a dog if it is tied to the house once the dog is caught.

Also you have a Director of one of your departments that does not live in the city but makes over 25,000. a year. Also why is Montoursville getting \$2900. a year to do the city payroll?

We obtained these petitions but a lot of the people only work in the city. If anything happens to them in the factory they know they will have an ambulance available. When they need an ambulance we don't ask them if they reside in the city or not.

Dr. Pagana - As to payroll, professional services do not have to be bid.

Mr. E. Kujawa, Adams Street - I sit here listening tonight—Mr. Curchoe wanted to cut police department, meter rates to be increased from 10¢ to 25¢—you are driving people out of the city. You are going to drive all people out for good. We could get along with a Mayor and four councilmen. Maybe we should cut a couple councilmen here. Does this council know what is going on in the departments. Why don't you do your homework instead of having department heads do it for you. Six years ago we had six beat men and crime rate was down 22% now is it up to 9%—put more men downtown. If a train on track in Newberry hope someone puts fire out because #2 will not be able to. If #6 closed it will take twice as long to get into Newberry. Police pensions— \$130,000. last year, this year \$62,000. which is only one-half you should be putting in.

Mr. D. Sampson, W. Third Street - I was told by one councilman that because I was not a property owner I had no right to voice an opinion on city matters. What right do these people have to say that I have no right to voice an opinion. Your not even trying to make ends meet. Your all one sided. Union brought in petitions from homeowners and some people who pay personal taxes. I care about my city and I have been very upset.

Mrs. Doris Levinson, Hepburn Street - If councilmen gave up salaries and secretaries within City Hall could be shared between departments perhaps these men could be kept on. If people went with less that were voted in perhaps a lot of these things could be eliminated.

Mr. William Verdini-1708 Chestnut Street - The three minute time limit for discussion can be beneficial at times but at these meetings the police and firemen are affected. Even if you lay these people off you still are going to have a

minutes for meeting of December 14, 1978 (cont'd)

not with your minds. You need these men. You can't lay-off these men. It takes men like this to do the job. This council needs a little gaveling, lollipop throwing etc. We need a little action. We should not lay people off to balance budget. We are going to be first third class city to go into recession, believe me.

Mrs. Lyn Logan, Linn Street - With a $\frac{3}{4}$ mill increase (\$750,000.) what are you going to do with this money? It is \$4.25 per taxable unit to keep firemen on. I understand that bus drivers make \$4.65 per hr. to start. My husband makes less than this and has been on the department for eight years.

Ten minute recess called.

Meeting reconvened.

Mr. Casale, City Solicitor had the following answers to questions asked at last meeting regarding areas that could possibly produce additional income for the city.

Ambulance calls-- City presently charging \$15.00 -could be increased by amending present ordinance.

Parking meters-- Could be increased on the street. No ordinance needed if increase decided upon.

Traffic tickets-- They can be increased under traffic code penalty section.

Parking lot tax - You can have a parking lot tax on non-resident parking lots. Parking lots that charge a fee. This doesnot apply to facility owned lots that provide free parking. (Johnstown has such an ordinance which levies 5% of gross)

Bond issue - interest on fund cannot be offset. Any excess interest to be used to retire indebtedness. Bond money cannot be used for non bond items.

Parking Authority
Solicitor -- Can City Solicitor do his duties? Yes, unless conflict of interest develops between city and Parking Authority.

BP & Merc. Tax-- cannot repeal mercantile and have just a business privilege tax without sharing with school district.

Mr. Curchoe - We are presently charging a \$1.00 for a parking ticket. How much does it cost us to issue that ticket? How much does it cost us to issue an ambulance bill?

Dr. Pagana - We will have an answer for you within a weeks period.

Dr. Hipple- Ambulance fees should be in line with surrounding communities.

Dr. Pagana announced that a meeting had been held with Mullin /Longeran in regards to community development funds. Reimbursement can be received on projects which have been done with partial or complete community development funds. Some of the projects mentioned-- New Fire Station, Flannigan Park, some storm sewer projects etc.

Mayor Kirby - We can plug in over \$40,000. of Community Development monies into the operating budget for services in Public Service Office, Engineering and Surveying. Also Director of Codes and secretary. It amounts to overall \$40,000. which we can safely plug in and run through as a backcharge to CD as a carry over until next year. (for services rendered in the past year.)

Dr. Hipple- What would fee be for 1979 year alone?

Mr. Orso- We are talking about '79 but we are basically talking about projects now under construction. You must document what you are asking for and I was six months without a city engineer. Remember these funds won't go on forever.

Budget review was held at this time.

The Office of the Director of Public Services, Finance and Public Safety was reviewed and there will be no increase in the Director's salaries of all three departments. Salary to remain the same as in 1978.

Mr. Hunter, City Councilman had the following proposal to present to City Council.

The tax proposed is an occupation tax levied on individuals who rent property within the city and work in the City. Mr. Hunter stated that the added tax would take some of the load for next year off the backs of retired persons on fixed incomes and all property owners in the city in general.

Mr. Hunter reviewed other taxes presently being levied by the City:

Real Estate - 12 $\frac{1}{4}$ mills
Per capita &
Residence Tax- \$5.00
Mercantile tax - 1 $\frac{1}{4}$ mills
Wage tax - 1% shared with school-dist.
B. Priv. tax - 2 mills
Occup. Priv. Tax - \$10.00
Amusement Tax - 10% on mechanical devices
Occp. tax not levied- school and county each levy occ. tax.
(county based on 10 mills --\$50,683.62)

Revenue estimate figure was increased to read \$152,500. for '79 (this is assuming a collection rate of 96%) This figure was extended out to 1979 estimate.

Mr. Staiman- This is a very close budget, very little room to move. If anything happens that anything fails to materialize we would not have enough money to meet our bills in 1979.

Further discussion held on occupation tax (60 mills) and real estate at 2 $\frac{1}{4}$ mills.

The Solicitor stated that Lancaster has this tax. It is an unpopular tax but haven't found a tax that is popular.

Mr. Hunter- Our tax machinery is already in place. (we would use county assessment figures) All residents are already assessed. We do not have to set up any mechanics to collect this tax. It gives some relief to retired people. I think it is worth considering. People 65 and over are assessed at \$100.00. The burden would fall on people working and it gives relief to retired person. The classifications would run from \$100. to \$1200. The most an individual would pay would be \$72.00 per year. This is one method of reducing real estate taxes and allowing everyone to participate in direct payment.

Mr. Curchoe - I had looked at this tax--the value of your property more reflects your income in total. You could have classification making maximum paying \$72.00 but if you have an absentee landowner he will be paying city nothing. If you do not work in the city you won't pay anything. I'm afraid we are going to put tax burden on fewer people. We are going to end up driving the remainder of the people out of the city.

Mayor - It is a very unpopular tax but being unpopular as it is we will be relieving the property owner and older persons of some of the added tax responsibility.

Dr. Pagana - This tax will take burden off of person with fixed income.

Mr. Curchoe - People moving out of the city are the middle income. We are making people take money out of one pocket, now it is another pocket. You have people on top and bottom not paying and people in middle getting hurt. There is less discrepancy in real estate tax because you only pay what you can afford to buy. We can't collect if people live out of the city.

Mr. Hunter- Real estate taxes are not equitable. Two homes on the same street are not assessed the same. Some assessments are out of line. If we don't take some drastic moves --we have to work with what is available to us. This is one more tool we have to use. It is legal both county and school have been using it.

Dr. Hipple - It is clear we are going to have a tax raise. It is just how much we are going to raise. I don't like this tax; I don't think it is exactly equitable. I think if we raise real estate tax not only will it hurt the retired person but it may hurt future development in the city. I would hope it would be

a stop gap measure and later would be repealed.

Mr. Lucasi - We are going to have to find another avenue. It discourages people from buying homes in town. This is a stop gap measure and I'm in favor.

Motion to prepare occupation tax ordinance:

Motion made by Mr. Staiman, seconded by Dr. Hipple to direct the Solicitor to prepare proper ordinance using 60 mills and have ordinance ready for next week's meeting. Motion carried with a vote of 6 yeas and 1 nay. Mr. Curchoe voting nay.

Mr. Casale - It helps low income group. The School District ordinance exempts retired and disabled only. We can exempt who we want when we write up ordinance.

The finance committee will meet early next week with Mr. Spitler and plug in all figures so ordinance can be acted upon on first reading December 21st.

All other areas mentioned in this discussion in regards to increasing fees will be looked into as other sources of anticipated income.

Upon a motion by Mr. Lucasi, seconded by Mr. Curchoe council adjourned meeting at 10:30 P. M.

Elda C. Pagana
Elda C. Pagana, City Clerk

December 21, 1978
Williamsport, Penna.

A meeting of Williamsport City Council held on December 21, 1978 at 7:30 P. M. in City Hall Council Chambers, City Hall, Williamsport, Pennsylvania.

The meeting was called to order by the President of Council, Charles M. Pagana.

The following members of City Council were present:

Dr. Charles M. Pagana, President
Dr. Randall V. Hipple, Vice President
Mr. Carl M. Hunter, Councilman
Mr. Carl A. Curchoe, Councilman
Mr. Stephen J. Lucasi, Councilman
Mr. Thomas E. Bailey, Councilman
Mr. Marvin H. Staiman, Councilman

Also present: Mayor Daniel P. Kirby, Mr. Michael J. Casale, City Solicitor; Mr. Ronald C. Travis, Asst. Solicitor; Mr. John M. McDermott, Director of Public Safety; Mr. Robert L. Orso, Director of Public Services; Mr. Thomas D. Spitler, Director of Finance; Mr. Dan Brosnan, Finance Aid; Mr. John Crado, City Engineer; Mr. William J. Strouse, City Controller and Mr. Thomas Woodring, Asst. City Controller.

The invocation was given by Councilman Curchoe followed by the salute to the flag.

Upon a motion by Mr. Staiman, seconded by Mr. Bailey council accepted and approved the minutes for meeting dated December 7th, 1978 as submitted. Motion carried with a vote of 7 yeas.

Public Hearing:
Revenue Sharing funds for 1979:

At this time a Public Hearing was held on budgeted uses of an estimated \$793,000. in Federal Revenue Sharing Funds for 1979. The administration has held their public hearing and now the legislative body must hold their public hearing on proposed uses for 1979.

The public hearing was properly advertised as to date, time and place of public hearing and the proposed budget was properly placed on display in the office of the City Clerk ten days prior to the public hearing.

The administrations recommendations on the uses of the revenue sharing funds for 1979 is as follows:

(Mr. Spitler presented the proposed uses:)

Lease-Rental payments (for reduction of bond issue) \$ 489,000.
Pension contributions \$ 304,000.

That would be the total amount of \$793,000.

Discussion:

Mr. William Levinson, W. Fourth Street - What can revenue sharing money be used for? What are restrictions?

Mr. Spitler- Not much in the way of restrictions but cannot be used to make payment on old debt prior to 1972.

Mr. Levinson- Can money be used for salaries of city employees?

Mr. Spitler - Yes, but not in the Dept. of Transportation due to federal funds flowing in there.

Mr. Levinson- Why can't some of that money be used for the nine firemen the administration proposes to lay-off.

Dr. Pagana - Council has kept Revenue Sharing for capital expenditures only; because of the construction of Cemetery Run, a public services building and etc. we decided to float a bond issue and pay it off with revenue sharing. The idea if you plug into operating budget you may well get caught so we kept it for capital expenditures only. As to pension contributions that is a must to keep our heads above water.

Mr. Spitler (speaking on the \$304,000. to be used for pension contributions:) \$240,000. for fire and \$62,000. for police pension fund with remainder to city employees fund and that is just to meet current expenses -- to make actuary sound another \$100,000. needed this year and for next twenty years. Past administrations have neglected pension funds and we have been forced to put three times more in just to keep pensions current.

Mr. Arthur Smith, High Street - It would have been better to do it piecemeal (cap. exp.) then sticking out your neck for twenty years to pay off the bond issue.

Dr. Pagana - Less expensive to do these projects all at once (Cemetery Run Project, McClure Run, Public Services Bldg., etc.) before interest goes up. Bond issue floated at 5.5%. The need is there--residents were being flooded out in area of Cemetery storm sewer project.

Public hearing on revenue sharing called to a close.

Upon a motion by Mr. Curchoe, seconded by Mr. Hunter an ordinance known as council bill # 391-78, ordinance # 4943 passed final reading with a roll call vote of 7 yeas.

AN ORDINANCE

BE IT HEREBY ORDAINED, that the following budgetary transfer be made:

SECTION 1:

To: Department of Public Safety (Fire)		
Personnel Costs		
Life Insurance	242-141	\$ 1,082.00
Med. Exp. Insurance	242-142	11,708.89
Purchase of Services		
Laundry & Cleaning	242-228	375.00
Equipment Repairs		
Repairs to fire vehicles	242-402	1,200.00

Ordinance:
#4943

Transfer in
General Fund
appropriation:
Public Safety
Dept.

(final reading)

minutes for meeting of December 21, 1978 (cont'd)

<u>Department of Public Safety (Police)</u>		
Police Overtime	244-108	\$ 6,500.00
Police Med. Exp. Ins.	244-142	5,509.69
<u>Materials and Supplies</u>		
General Office	244-301	500.42
		\$26,876.00

SECTION II: From:

<u>Department of Public Safety</u>		
Personnel Costs		
Officer's Salaries (Police)	244-301	\$26,876.00

SECTION III: BE IT FURTHER RESOLVED, that this ordinance take full force and effect upon final enactment.

Enacted this 21st day of December, 1978.

Ordinance:
Transfer in
1978-79 capital
budget:
(first reading)

Upon a motion by Mr. Hunter, seconded by Mr. Staiman an ordinance authorizing certain transfers in 1978-79 Capital Budget appropriations in the total amount of \$15,546.00 passed first reading with a roll call vote of 7 yeas.

Discussion:

Mr. Orso - None/ being transferred to complete West Street storm sewer and additional money needed in Henrietta Street sewer account. Transferring money to receive bids.

Mr. Staiman- What is your educated guess over the \$12,000. that was allocated for Henrietta storm sewer?

Mr. Orso - We think job could come in between \$15,400. or \$ 15,600. It could come in lower.

Report from
Councilman
Hunter:

Dr. Pagana asked Councilman Hunter, a member of the Finance committee to give a report on recommendations made by the committee in order to balance 1979 budget.

Suggested
means of inc.
revenue for
city operating
budget:

Dr. Pagana extended appreciation to the members serving on the finance committee for their diligent work on this budget.

Mr. Hunter- As of this date the budget has looked to show a balanced budget as to total income and expenses. One thing it didnot address to is a shortage of \$210,000. We didnot feel we could be a part of a budget that had a \$210,000. deficit. (deficit discovered during audit of city finances earlier in the year) As a result of accounts audited for 1976 we found number of items that had been carried on the books. The total being \$210,000. We felt we must be consistent on budgets we have acted on before. We have asked administration to account for this deficiency.

At end of 1978 or beginning of 1979 a deficit shown of \$155,600. We have to increase income or decrease expenditures to account for this.

Sale of present
City Hall Bldg:

The sale of the present City Hall Building was not included in the budget. The City Hall building we are presently in--no provision made for sale of this property. We felt we could sell this building sometime in 1979. Estimated figure \$100,000. for sale of this building. This will offset in part difference for 1978.

Reduction in
auditor's fee:

The public accountants have reconsidered their 1978-79 fee for auditing and we understand it is a reduction of \$3,000.

Inc. in am-
bulance fees:

Ambulance fees- Thanks to department heads --they recommended that we consider increasing rates from \$15.00 to \$20.00 within city and from \$25.00 to \$30.00 within reasonable distance outside of city.

After review of figures the administration has reworked budget. We calculated our contingency at \$32,000. Reworked figures will appear in budget.

Fig. meter
increase (study
to be done)

Mr. Lucasi- (speaking on parking meter increase) The finance committee unanimously proposed not to increase parking meters or fines for on street parking. Asked that administration do study and make recommendation to council within 90 days before considering any change on this subject.

Mr. Curchoe - Fine effort with everyone joining together to balance budget.

Mr. Hunter- The \$210,000. deficit reduced to \$168,000. - result of administration to curtail expenses. Reduction of \$55,000. expenditures.

Dr. Pagana- Many of these changes will be made via transfer ordinances.

Mr. Hunter- The \$40,000. chargeback (mentioned last week) from Community Development in area of departmental earnings for services performed by Public Services department, engineering and surveying.

A motion was made by Mr. Hunter, seconded by Mr. Lucasi to place the sale of surplus property in the amount of \$100,000. in surplus property account. (This is in anticipation of the sale of the present City Hall building.) Motion carried with a vote of 7 yeas.

Sale of City
Hall to
be placed
in surplus
property
acct.

Dr. Pagana asked that every effort be made to meet with Mr. Weintraub from the Adaptive Use group of Historical Commission to get things underway. The value of the land is the major asset.

Mr. Hunter- Should bring close to \$100,000.

Mayor - We are not locked into \$100,000. figure--that was realtors appraisal.

Mr. Lucasi - I know of two groups who are presently very interested in buying this property. Several members working on it very closely. We are trying to keep them interested.

A motion to decrease line item (auditing) by \$3,000. was withdrawn when it was decided this would be done via transfer ordinance.

Dec. in line
item for audit-
ing. (motion
withdrawn)

Upon a motion by Mr. Staiman, seconded by Mr. Curchoe an ordinance amending article 911 of the codified ordinances of the City of Williamsport increasing the rate for ambulance calls passed with a vote of 7 yeas.

Ordinance:
(first reading)

Discussion:

Mr. Lucasi - Ordinance states within reasonable distance. What is considered reasonable distance?

Mr. McDermott, Public Safety Director - Just surrounding communities like South Williamsport etc.

Dr. Hipple- Did you change income figure to reflect this increase?

Mr. Hunter- Came up with a figure of \$3500.---feeling that the number of calls will decline in 1979. This could be handled in form of a transfer ordinance.

Mr. Spittler- I increased ambulance revenue by \$3,000., increased from \$22,000. to \$25,000.

Upon a motion by Mr. Hunter, seconded by Mr. Staiman an ordinance of the City of Williamsport, Lycoming County, imposing and levying a tax for general revenue purposes on the assessed valuation of each and every occupation engaged in by taxable inhabitants of the City of Williamsport at the rate of sixty mills (60) of valuation; providing for assessment and collection and imposing penalties for violation thereof passed first reading with a roll call vote of 7 yeas.

Ordinance:
(first reading)

Discussion:

Dr. Hipple- Any exemptions?

Mr. Hunter - That was not part of the original proposal.

minutes for meeting of December 21, 1978 (cont'd)

Mr. Casale, City Solicitor- It was suggested that I write ordinance as written. An amendment can be made next week. I can check with school district and county on exemptions and their procedure.

Mr. Bailey - County assessment top category is \$1500. not \$1200. Judges and etc. at \$1500. Assessment.

Dr. Pagana - We will follow same guidelines.

Mr. Casale - If our exemptions different then county or school board we would then have to have our own Board to review exemptions.

Dr. Pagana heard from Mr. Strouse the City Controller at this time. Mr. Strouse read over a list of duties performed by his deputy. (This position had been cut earlier during budget deliberations.)

Mr. Strouse asked council to reconsider the need for a deputy for the Controller's office due to added responsibilities and also citing that in the past this office listed three individuals employed by the Controller's office.

Mayor Kirby - I certainly back up what Mr. Strouse says. As of three years ago this office had three employees. You as council have added to Mr. Strouse's duties. The deputy is making a little over \$8,000. per year. One man to hold this position is too much.

Dr. Pagana - Would you be willing, if council were to entertain a motion to include the position of deputy for this office, to take money from legislative contingency rather than add to tax burden.

Mayor - I hate to see us go into that. Yes, I would.

Mr. Spitler- The total is close to \$12,000. figure with all benefits included.

Dr. Pagana - Legal responsibility here. The Controller has to perform certain legal duties. It was a three man department and it would be next to impossible to perform all alone. I would like to recommend this even though it will make it a tighter budget.

Mr. Lucas - Don't think we will be cutting ourselves too close in legislative contingency fund?

Mayor- I have no choice but I can't realistically say this man doesnot need this help.

Upon a motion by Mr. Staiman, seconded by Mr. Hunter council to replace the Deputy Director in the Controller's Office. Money to come from legislative contingency fund via transfer ordinance. Motion carried with a vote of 7 yeas.

Ordinance: Upon a motion by Mr. Staiman, seconded by Mr. Curchoe an ordinance adopting various operating budgets for the City of Williamsport including the Sinking Fund, General Fund, Utility Fund, Capital Projects und, Downtown Mall Fund, Liquid Fuels Fund, City Hall Operating Fund, Parking Revenue Fund and Federal Revenue Sharing Fund passed first reading with a roll call vote of 7 yeas.

Discussion:

Mr. Hunter - Would like an explanation of Section III of this ordinance?

Mr. Spitler- Amount of all purchase orders at this time also have all capital projects. We did include that on advice of auditors.

Mr. Hunter- What has been deleted from last years budget?

Mr. Spitler- Equity statement shows General Fund. General fund total doesnot include sinking fund or utility fund. The auditors thought that each fund should stand alone. An increase of \$255,000. over last year.

Ordinance: Upon a motion by Dr. Hipple, seconded by Mr. Curchoe an ordinance of the City of Williamsport, County of Lycoming and the Commonwealth of Pennsylvania fixing the tax rate for all city purposes for theyear 1979 passed final reading with a vote of 7 yeas.

Reinstatement of Deputy Controller position in budget:

Motion to replace Deputy Controller position:

Ordinance: (first reading)

Ordinance: (first reading)

Upon a motion by Mr. Curchoe, seconded by Mr. Lucas a resolution approving Wide Area Telephone Credit Union as developer of parcel #31 in the West Edwin Street Renewal Project area was tabled until January 11th when a public hearing will be held. Motion carried with a vote of 7 yeas.

Resolution (tabled) Approving WAT as developer in W. Edwin St. Project area:

Discussion:

Mr. Howard Chambers, Community Developer Director - There is a problem---about four months ago we amended Urban Reuse Plan. An oversight on my part, I forgot to check Zoning Code. Next month you will have an amendment to the Zoning Code to permit this use. The reason I bring this before you tonight is this reason---it has been approved by the Redevelopment Authority and the Planning Commission and these people have begun to incur expenses.

This is a credit union that serves all telephone companies in a fourteen county area. It is a tax producing property.

Dr. Hipple- We will have seen plans prior to final approval? We are dealing with just this particular property. If perchance someone wants to do something with another property, we would deal with that on an individual basis? We would not be setting a precedent?

Mr. Chambers- Exactly, we are asking it be designated as conditional use at public hearing. We could have gone to Zoning Hearing Board but we felt we would lose control. We will be dealing with just this one property.

Reports:

Upon a motion by Mr. Staiman, seconded by Mr. Lucas council accepted and placed on file the Department of Finance report for November 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Lucas, seconded by Mr. Curchoe council accepted and placed on file the Bureau of Fire monthly report for November 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Curchoe, seconded by Mr. Staiman council accepted and placed on file the Bureau of Police monthly report for 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Staiman, seconded by Mr. Lucas council accepted and placed on file the City Treasurer report for November 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Curchoe, seconded by Mr. Hunter council accepted and placed on file the Williamsport Planning Commission minutes dated December 11th, 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Staiman, seconded by Mr. Bailey council accepted and placed on file the Water Authority minutes dated November 15th, 1978. Motion carried with a vote of 7 yeas.

Motion by Mr. Curchoe, seconded by Mr. Lucas council accepted and placed on file the Sanitary Authority minutes dated November 15th, 1978. Motion carried with a vote of 7 yeas.

Upon a motion by Mr. Staiman, seconded by Mr. Lucas council approved the issuance of certificate of appropriateness to the following property owners:

Owner of property	Address	Nature of work	Certificate of appropriateness:
Commonwealth Bank & Trust Millionaires Row Hist. Homes	407 W. Fourth St.	remove modern appendage & winterise facade.	
Dr. Herbert Ecker	420 W. Fourth St.	Painting	Comm. Bank & Trust Co.
Motion to issue certificates carried with a vote of 7 yeas.			Dr. H. Ecker:

minutes for meeting of December 21, 1978 (cont'd)

Courtesy of the floor:

Mr. Arthur Smith, High Street - The work being done on steps at Post Office building, I was wondering if that is an additional change order or an add-on?

Mr. Orso - No, it is in original design.

Miss J. Bowie, Almond Street - Anything being planned for Adaptive Use Study?

Dr. Pagana - Adaptive use study will cover all avenues. Will cover as many angles as possible. The sub-committee's recommendations must be okayed by council.

Mr. Pete Salvatori, Lewisburg, Pa. - Do you have any CETA people working for the city now? When does that run out?

Dr. Pagana, Yes we do. I don't think the county knows when CETA funds will run out.

Mr. Orso - Certain positions run out in September of next year. Some CETA workers are recalled as of quitting time tomorrow.

Mr. Salvatori - Any Federal grants to be received in the near future?

Dr. Pagana - Aside from Revenue Sharing, none to my knowledge.

Mr. Orso - Two bills in legislature now dealing basically with safety programs in State of Pennsylvania. We will have to apply pending passage by Congress.

Mr. Salvatori - Status of Highway garage. Building should be condemned - hazard to our people.

Mr. Orso - The preliminary design is done. Presently there is a tentative meeting slated prior to January 11th. We hope to have bid letting by third week in February construction to start thereafter.

Mr. William Levinson, W. Fourth Street - If city is spending money to belong to the Pennsylvania League of Cities is there any advantage to belonging to it?

Dr. Pagana - Many advantages. We get 'gobs' of information during budget period, keeps us informed as to what other cities are doing. Very strong lobby.

Mr. Levinson - I was told that 53% of property within city is non-taxable such as churches, synagogues, etc. You should try to levy taxes of some kind on these properties.

Dr. Pagana - Illegal to levy taxes on structures of this kind. Also includes schools and colleges.

Mr. Levinson - The city has a very good paid Public Safety Director. Why is it necessary to have a Civil Defense Director? Duplication of services.

Dr. Pagana - You should be aware of what Civil Defense does. You have been to enough fires. The Director of Public Safety has enough to do to direct the Police and Fire departments. We are getting a lot of free service from Civil Defense.

Mr. Dennis Sampson, W. Third Street - Was I correct when I stated \$8,000. for the purchase of a bench for City Council at new City Hall building?

Dr. Pagana - Money not coming from operating budget. The eight thousand dollar figure also included heating, ventilation and etc. that goes in that room. It would only reduce bond issue if deleted would not free up operating budget.

D. Sampson, W. Third St. - Using last year's ambulance calls, I get an increase of \$10,000. for revenue.

Dr. Pagana - They did it conservatively. Only emergency calls will be handled next year.

Dr. Hipple - City may end up taking less calls if private services does start.

Mr. D. Sampson - Very few of the calls made now are routine calls.

A citizen - How can city charge for ambulance when it is already tax supported?

Dr. Pagana - All outlying areas charge. It is a cost to taxpayer. A large majority of ambulance costs is paid via insurance, DPA to the tune of \$25.00. Money goes into our general fund.

Mr. H. Marchese, George Street - Who will determine if call is an emergency or routine call?

Dr. Pagana - We will not discuss any situation that pertains to Fire or ambulance due to pending litigation.

Mr. M. Marchese, Tucker Street - Do we ever get commended for what we do. We donate a lot of free time.

Dr. Pagana - I have been here six years and I have heard it quite often.

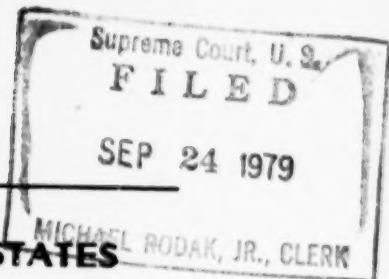
Mr. Harold Anthony, 337 Walnut Street - We had a fire, in fact four fires that night and a council member made comment -- "when paid men done, send them home and have volunteers stay and fight fire."

Dr. Pagana - Please check with the Chief and see if comment made. I had nothing to do with that decision. Council has no right to give an order -- it would have to come from the Mayor or Public Safety Director.

Mr. Staiman - Congratulated Mr. Marchese for receiving the Benjamin Rush award.

Upon a motion by Mr. Curchoe, seconded by Mr. Hunter council adjourned meeting with a vote of 7 yeas. Council members to discuss pending litigation in a closed session.

Elda C. Pagana
Elda C. Pagana, City Clerk



IN THE
SUPREME COURT OF THE UNITED STATES

Term, 19

NO. 79-459

LOCAL 736, WILLIAMSPORT FIREFIGHTERS,
SMITH, JONATHAN; SAMPSON, DENNIS;
EMERICK, RICHARD; CHILSON, DENNIS; HILL,
DANIEL; DOCHTER, WILLIAM; ANTHONY,
HAROLD; STONE, JEFREY; & BICCHLE, LAWRENCE,
Individually and on behalf of all other Williamsport
City Residents, Taxpayers and those protected by
Williamsport Firefighters

vs.

CITY OF WILLIAMSPORT, KIRBY, DANIEL,
MAYOR; and PAGANA, CHARLES; LUCASI,
STEVEN; HIPPLE, RANDALL; STAIMAN, MARVIN;
BAILEY, THOMAS; CURCHOE, CARL; and
HUNTER, CARL, as the CHIEF ELECTED
OFFICIALS and members of the Williamsport City
Council

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Ronald C. Travis, Esquire
Assistant City Solicitor
• P.O. Box 1507
Williamsport, PA 17701
(717) 322-6144

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STATEMENT OF THE CASE

The Respondents disagree with some of the Statement Of The Case as set forth in the Petition. First of all, with respect to 3.5 of the Statement of the Case, it should be pointed out that contrary to the assertion by the Petitioners, the "courtesy of the floor" was not for a short period of time, as the time period to be spent on the courtesy of the floor was unrestricted in any manner except that each individual is limited by City Ordinance to speaking no longer than three minutes at any one time, but after giving a three minute statement, the individual may again seek recognition to make another three minute statement. With respect to 3.6 and 3.7, it should be pointed out that those items are not part of the Agreed Statement of Facts and therefore should not be set forth as subparts of Item 3 in the Statement of the Case set forth by the Petitioners. With respect to point 5 of the Statement of the Case set forth by the Petitioners, it is pointed out that the assertion concerning the Pennsylvania law relating to lay-off of a fireman for "reasons of economy" is totally inaccurate. The Pennsylvania case law does not limit lay-offs for "reason of economy" to only those situations where the employees to be laid-off are unneeded, there has been some in advance study, or the efficiency of the department would not be lowered.

It is also submitted by the Respondents that the following information is relevant and significant with regard to the determination of whether the prayed for Petition should be granted:

On November 29, 1978, the Mayor of the City of Williamsport presented to the City Council of the City of Williamsport his proposed operating budget for calendar year 1979. Because of the increased labor

costs and other expenses, coupled with loss of funding from various sources, the Mayor's recommended budget called for a tax increase of 5½ mills, and the elimination of thirty positions which were carried in the 1978 budget. Of the thirty positions eliminated, nine were positions which were vacant due to attrition, and the elimination of the other twenty-one positions required layoffs. (Agreed Statement of Facts, 9.2 and 9.3) Of the twenty-one layoffs, nine were Williamsport City firemen. Although the budget presentation on November 29, 1978, set forth the elimination of positions and the tax increase, specifics of the positions to be eliminated were not made public on the 29th of November, as the Mayor wanted to notify the individuals affected personally. The individuals personally affected were notified of the layoffs by letter dated December 1, 1978, from the Mayor directly to each of them. The letter in question is attached as Exhibit A to the Agreed Statement of Facts and speaks for itself.

The gathering of the data for the preparation and presentment of the operating budget for the City of Williamsport for calendar year 1979 was a lengthy and involved procedure; (Appendix 32A-35A). Since the procedure surrounding the budget preparation may be of interest to your Honorable Court, the following summary is offered. A budget schedule for submission by the various department heads is drawn up by the Office of Finance and Personnel (32A-33A), and the budget requests are received by the Mayor in public sessions with public input permitted at the time of the submissions. After the various budget requests are received from the department heads, the Mayor assembles the budget requests and the income projections and compiles an overall budget which is submitted to City Council of the City of Williamsport

for review. The City of Williamsport budget is a line item budget and is gone over line item by line item by City Council, and with respect to each line item, City Council has the authority to adopt the Mayor's recommendation, decrease the line item, or increase the line item.

Subsequent to receipt of the budget by Williamsport City Council, various budget work sessions were held. At the budget work sessions other than those scheduled for the regular Thursday meetings, no public input with respect to the budget was permitted. However, with respect to the budget sessions held on December 7, 1978, December 14, 1978, and December 21, 1978, public input was permitted and received by Williamsport City Council. Copies of the minutes from these public sessions were submitted as Exhibits D, E, and F to the Agreed Statement of Facts. (Appendix 36A-59A).

REASONS FOR REFUSING TO GRANT THE PETITION

In urging the Court to grant the Petition, the Petitioners relied upon three considerations as set forth in the Supreme Court Rule 19: (1) that the affirmance by the Court of Appeals was a decision which departed from Supreme Court authority. (2) That the District Court and the Circuit Court have decided a federal question in a matter directly in conflict with applicable decisions of the Supreme Court. (3) That both lower Courts have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of your Honorable Court's power of supervision.

In the Petition filed, as at the other stages of this case, the Petitioners contend that the case of **Genes vs. City of Duquesne**, 27 Pa. Cmwlth. 620, establishes

the criteria for layoffs for "reasons of economy" and that economy layoffs must be limited to the removal of unneeded employees, or the removal of firemen to improve efficiency, and requires an advanced study. However, it is respectfully submitted that this representation as to what **Genes** stands for is totally inaccurate. Since the Petitioners are relying so heavily upon the case of **Genes vs. City of Duquesne**, supra, it is important to very closely examine the factual circumstances in **Genes**. The City of Duquesne laid off four firefighters and based the layoffs on "reasons of economy," at a time when the real estate taxes for the City were reduced by one mill. The four firemen argued that the layoffs were not for "reasons of economy" but were for political reasons, in that Mayor-elect Valco and two members-elect of the City Council had run on a platform pledging to reduce the tax burden for the citizens of the City of Duquesne. Therefore, the argument submitted on behalf of the four firemen was that the layoff of these four employees at a time when the tax rate was being reduced by one mill was not for "reasons of economy," but rather political and in keeping with the campaign platform on which the individuals ran and were elected. Since in **Genes**, the layoffs were accompanied by a decrease in the tax rate, the Court had to determine whether "reasons of economy" was broad enough to encompass a decrease in size of the work force at the same time as there was a decrease in the tax rate. The Commonwealth Court held that the phrase "reasons of economy" was broad enough to support a layoff of unneeded employees, regardless of the financial condition of the City. Counsel for the Petitioners seizes on this language to assert that only "unneeded employees" can be laid off for "reasons of economy." It is respectfully submitted that this contention is not supported by the **Genes**

case. As counsel for the Respondents understands **Genes**, what the Commonwealth Court stated was that unneeded employees can be laid off, regardless of the financial condition of the City, and that those layoffs can be called layoffs for "reasons of economy." However, it is submitted that this case clearly does not hold that in order to justify layoffs for "reasons of economy" the City must show that the employees to be laid off are unneeded, especially when the layoffs are necessary in order to reduce the necessity for a larger tax increase as here. The Commonwealth Court in **Genes** went on to state that under the phrase "other reasons," layoffs which would increase the efficiency of the department would be justified. Counsel for the Petitioners seizes on this language to assert that the City of Williamsport would have to show that the layoffs would increase the efficiency of the department in order to establish that the layoffs were for "reasons of economy." However, this assertion on behalf of the Petitioners is incorrect. Since the reason for the layoffs in the present situation were solely for "reasons of economy," any consideration of what would have to be shown in order to establish a layoff for "other reasons" has absolutely no application to the present layoffs.

In Pennsylvania layoffs for reasons of economy by Third Class cities are governed by State Statute, 53 P.S. Section 39871 which provides: "If for reasons of economy, or other reasons, it shall be deemed necessary by any city to reduce the number of paid members of any fire department, or the number of fire alarm operators or fire box inspectors in the bureau of electricity, then such city shall follow the following procedure:

First, if there are any paid firemen, fire alarm oper-

ators or fire box inspectors eligible for retirement under the terms of any pension fund, then such reduction in numbers shall be made by retirement on pension of all the oldest in age and service.

Second, if the number of paid firemen, fire alarm operators and fire box inspectors eligible for retirement under the pension fund of said city, if any, is "insufficient to effect the reduction in number desired by said city...." Reading the Statute clearly shows that layoffs for "reasons of economy" are not limited to layoffs of unneeded personnel, or layoffs which would increase the efficiency of the department, and does not require any advance study prior to the layoff. A review of the Statute shows that firemen are not permanent employees with a Constitutional right to a pre-termination hearing when the layoff is for "reasons of economy."

It is submitted that under the **Genes** case as well as other Pennsylvania cases, firemen are terminable "at will" for reasons of economy. In **Kraftician v. Borough of Carnegie**, 35 Pa. Cmwlth. Ct. 460, 386 A. 2d 1064 (1978), a Borough police officer was challenging his furlough. Kraftician was one of two Borough police officers who were furloughed for "reasons of economy" while two non-civil service employees of the police department designated as "special police" were retained. The Borough code with respect to furloughs for reasons of economy, 53 P.S. Section 56190, is substantially the same as the Third Class City Code provision covering the same subject matter. In reviewing and upholding the furlough of Kraftician, the Commonwealth Court stated, "The only limitation imposed on the power of a municipality to act in a reduction of its police civil service work force for economy or other reasons is that it must act in good faith." (at p. 473) As Chief Judge Nealon so aptly stated in his

consideration of the holding in **Kraftician**, "The point of that requirement is that a municipality may not use "reasons of economy" as a ruse in order to layoff a municipal employee who the authorities wish to discharge for other reasons. The good faith requirement would not be for the benefit of the general citizenry should have no concern with which particular firemen are discharged." (at p. 8, lower court Opinion) See also **Borough of Cannonsburg v. Flood** Pa. Cmwlth. Ct. _____, 387A. 2d 951 (1978). In **Pennsylvania State Lodge Fraternal Order of Police v. City of Wilkes-Barre**, _____ Pa. Cmwlth. Ct. _____, 388 A. 2d 1146 (1978), the Commonwealth Court upheld the dismissal of the assumpsit complaint by the county court, finding that neither the arbitration award nor the Third Class City Code mandates the number of police officers a municipality must have, but rather it is up to the municipality council to determine the number of policemen to employ. After reviewing this case, Chief Judge Nealon aptly stated, "I see no reason why the law would be any different with firemen." (at p. 9 of lower court Opinion).

Petitioners assert that the decision by the Middle District Court, which was affirmed by the Court of Appeals for the Third Circuit represent a departure from the decisions by your Honorable Court in a number of cases. However, a review of these decisions eluded to show that this assertion is basically incorrect.

In **Bishop v. Woods** 426 U.S. 341 (1976), your Honorable Court affirmed the termination of a police officer without a hearing stating: "The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. We must accept the harsh fact that

numerous individual mistakes are inevitable in the day-to-day administration of our affairs. The United States Constitution cannot feasibly be construed to require federal judicial review for every such error. In the absence of any claim that the public employer was motivated by a desire to curtail or to penalize the exercise of an employee's constitutionally protected rights, we must presume that official action was regular and, if erroneous, can best be corrected in other ways. The Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions." The police officer in that case was dismissed in accordance with the city ordinance allowing for the discharge of police officers for failure to perform work up to the standard of his classification, or if the officer was negligent, inefficient, or unfit to perform his duties. Following his discharge, the police officer filed suit contending that under the ordinance he was a permanent employee and thus entitled to a pretermination hearing. In rejecting the contention that the officer had a property interest in continued employment your Honorable Court found that the ordinance did not confer such status on the officer. A review of the Statute involved in the present case, 53 P.S. Section 39871 shows that the Statute does not confer a property interest in employment to firemen when the layoffs are for "reasons of economy." Thus, the decision of the Middle District Court and the Court of Appeals is totally consistent with the decision of your Honorable Court in the **Woods** case.

Furthermore, a review of the dissenting opinions filed in the **Woods** case shows that the decisions in this case are not inconsistent with the dissenting opinions. The dissenting opinion authored by Mr. Justice Brennan shows that the primary concern is

that the employee was not given a pretermination hearing in a situation where his good name, reputation, honor or integrity was at stake. However, in the present situation, the termination of the individual for "reasons of economy" does not bring into play any question of the employee's good name, reputation, honor or integrity and thus there is no need for a due process hearing for the purpose of according the employee an opportunity to clear his name. With respect to the dissenting opinion authored by Mr. Justice White, it is counsel's understanding that this opinion expresses concern for the lack of a due process hearing in a situation where the employee can only be discharged for cause. Reviewing the Pennsylvania Statute in question establishes that layoff for "reasons of economy" do not require a showing of cause and therefore the concern expressed by Mr. Justice White is not present in this case. In the dissenting opinion authored by Mr. Justice Blackmun, the primary thrust of the opinion deals with the "for cause" standard for dismissal which was heretofore pointed out, which is not the standard involved under the Pennsylvania Statute when dealing with layoffs for "reasons of economy." Since the termination of firemen under the Pennsylvania Statute for reasons of economy is "at will" as opposed to "for cause" the decision of the District Court and the affirmation by the Third Circuit Court of Appeals is not inconsistent with the dissenting opinions in **Woods**.

The Petitioners likewise assert that the lower court opinions are a direct departure from the decision of your Honorable Court in **Memphis White Gas and Water Division v. Craft** 436 U.S. 1 (1978). However, a review of **Craft** shows that in that particular case, your Honorable Court was faced with the question of whether or not the public utility was permitted to

terminate service "at will" under certain law or only was permitted to terminate for "good and sufficient cause." Having made the determination that the services were not terminable at will, but rather required good and sufficient cause, your Honorable Court then determined that there was in fact a property interest which entitled the consumer to a pretermination hearing. It is submitted that the decisions in the lower courts in the present case are not inconsistent with the **Craft** decision and are not a departure from the **Craft** decision since the employment of firemen is terminable "at will" for reasons of economy in accordance with the State Statute and the State decisional law.

In **Perry v. Sinderman** 408 U.S. 598 (1972) your Honorable Court was reviewing a Federal action brought by a junior college professor without tenure whose work contract was not renewed, and who was not given an explanation for the failure to renew nor was he given a pretermination hearing. The thrust of the action brought by the professor was that the decision not to rehire him was based on public criticism of the administration and thus infringed his free speech right and although there was no official tenure system under the formal tenure setup, he had an expectancy of re-employment. In affirming the decision by the Court of Appeals, your Honorable Court pointed out that these two assertions presented a bona fide constitutional claim and that the professor was entitled to attempt to prove his allegations. With respect to the claim of "property" interest, your Honorable Court pointed out that a person's interest in a benefit becomes a property interest for due process purposes if there are rules or mutually explicit understandings that support his claim of entitlement to the benefit and if such rules or mutually explicit understandings exist, the individual is entitled to a

pretermination hearing. Your decision in **Perry** is not applicable to the present case inasmuch as the Petitioners are not contending that the layoff was an infringement of their right of free speech, and are not contending that there were any rules or mutually explicit understandings that when layoffs are made for "reasons of economy" that city firemen have a claim of entitlement to continued employment absent "sufficient cause." It is respectfully submitted that the decision by the Middle District Court and the affirmation by the Third Circuit Court of Appeals is entirely consistent with the decision in **Perry**.

In **Board of Regents of State Colleges v. Roth** 408 U.S. 564 (1972) your Honorable Court was reviewing another situation where an untenured professor was not rehired and was offered no explanation or hearing prior to termination. In holding that the non-retention of the respondent was not tantamount to a deprivation of liberty and that he had no property interest protected by procedural due process, your Honorable Court emphasized the fact that in declining to rehire the teacher, the State did not make any charge against him which might seriously damage his standings and associations in the community and that there was no suggestion that in declining to re-employ the respondent this imposed upon him a stigma or other disability that foreclosed other employment opportunities to him. With respect to the question of property interest, your Honorable Court stated, "to have a property interest and a benefit, the person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." (at p. 577) Your Honorable Court found that although the teacher had an abstract concern in being re-hired, there was no State Statute, or rule or policy

that "secured his interest in re-employment or that created any legitimate claim to it." (at p. 578) It is respectfully submitted that the decision in the present case is totally consistent with **Roth** as the layoffs for "reasons of economy" did not adversely effect the individuals' good names, reputations, honor or integrity and further there is no State statute, or rule or policy creating any legitimate claim to employment by the nine individuals.

In **Goldberg v. Kelly** 397 U.S. 254 (1970) your Honorable Court was reviewing whether a recipient of public assistance was entitled to a pretermination hearing before such benefits were cut off. That portion of the **Kelly** decision, which is relevant with regard to the present situation, deals with the question of whether the benefits are constitutionally protected property. Your Honorable Court found that such benefits are a matter of statutory entitlement for persons qualified, and therefore the recipient is entitled to a pretermination hearing. The necessity for the pretermination hearing is founded on the statutory entitlement of the recipients. In our present case, there is no such statutory entitlement, and therefore a pretermination hearing is not required.

In **Mathews v. Eldridge** 424 U.S. 319 (1976) the primary focus of your Honorable Court is on the question of whether the termination procedure with respect to social security benefits meets due process requirements. Since the property interest in receipt of social security benefits is obviously created by statute, your Honorable Court did not have to decide the question of whether there was a property interest in the receipt of social security benefits. In the present case, the Pennsylvania Statute does not create a property right in continued employment when the

layoffs are for "reasons of economy." Thus, the decisions by the lower courts in this case are not a departure from the holding by your Honorable Court in **Eldridge**.

In **Gross v. Lopez** 419 U.S. 565 (1975) your Honorable Court was reviewing the suspension of high school students for misconduct without a presuspension hearing. In holding that the students were entitled to notice and a hearing your Honorable Court focused on the fact that the alleged misconduct could seriously damage the reputation of the students and hamper later educational and employment opportunities. Since the suspension under the applicable statute required cause, i.e. misconduct, the students were entitled to notice and a hearing at which they could dispute the allegation of misconduct. In the present case, the layoffs were for "reasons of economy" and thus those subject to layoff did not suffer a damaged reputation and would not be impaired in later employment opportunities. Since no cause or misconduct on the part of the individuals was asserted to support the layoff, it follows that no notice and opportunity for pretermination hearing was required. It is submitted that the lower court decisions are entirely consistent with your decision in **Lopez**.

Notwithstanding the assertions of the Petitioners that the lower court decisions are a departure from the above discussed decisions of your Honorable Court, it is clear the lower court decisions are in complete accord with your prior decisions.

CONCLUSION

For the reasons assigned above, the Petition for Certiorari should be denied.

Respectfully submitted,

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